



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

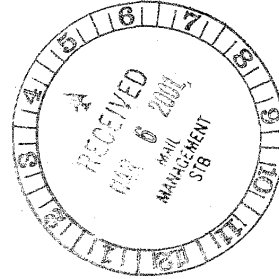
GENERAL COUNSEL

400 Seventh St., S.W.  
Washington, D.C. 20590

March 6, 2001

Office of the Secretary  
Case Control Unit  
Surface Transportation Board  
Suite 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Attn: Victoria Rutson



Re: Fin. Dkt. No. 33407

Dear Secretary Williams:

Enclosed herewith is the original of the Comments of the United States Department of Transportation on the Draft Environmental Impact Statement in the above-referenced proceeding. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

ENTERED  
Office of the Secretary

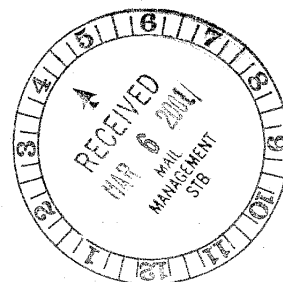
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Part of  
Public Record

Paul Samuel Smith  
Senior Trial Attorney

Enclosures

**Before the  
Surface Transportation Board  
Washington, D.C.**



\_\_\_\_\_)  
Dakota, Minnesota & Eastern Railroad Corp. )  
\_\_\_\_\_)  
-- Construction into the Powder River Basin )  
\_\_\_\_\_)

Finance Docket No. 33407

**Comments of the United States Department of Transportation  
on the Draft Environmental Impact Statement**

Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding will decide whether and under what conditions to permit the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to construct a new rail line into the Powder River Basin in Wyoming, and to upgrade its existing lines to accommodate large increases in rail traffic. A Draft Environmental Impact Statement ("DEIS") has been prepared that preliminarily identifies both the impacts of such a project and measures to mitigate them.

The United States Department of Transportation ("DOT" or "Department") has reviewed the DEIS, and agrees with its basic premise that DM&E and communities affected by this project should strive to develop mutually agreed-upon responses to its adverse impacts. DOT also believes, however, that DM&E should ultimately be held responsible for implementing reasonable measures to address the consequences of its proposed operations.

The Project and the Draft EIS

The DM&E seeks to transform itself by this project. It proposes to greatly extend its system in order to reach the Powder River Basin in Wyoming and thereby become a major transporter of coal. To that end it proposes to construct new railroad lines and to upgrade its existing lines in order to accommodate the addition of up to a maximum of 34 unit coal trains a day. (DEIS Executive Summary ("ES")-50.) The additional traffic is a very significant increase, especially considering the relatively light traffic today on the existing DM&E lines. It would in fact place this line among the busiest in the United States.

Pursuant to its responsibilities under the National Environmental Policy Act, the Board ordered the preparation of an Environmental Impact Statement. A DEIS has been released as part of this process. It correctly concludes that rail

traffic of this magnitude would impose significant additional impacts on affected communities. DEIS, Vol. IV, chap. 5 Tables 5.1-6 and 5.1-7. A heightened safety risk would result from the increased potential for grade crossing accidents and delays in the provision of emergency services. Communities would also face increased noise from both the operation of the trains themselves and from the additional sounding of train horns in the vicinity of grade crossings. Vehicular delays at crossings would also multiply because of the added rail operations. Id.

The DEIS notes these adverse effects and recommends a number of preliminary environmental mitigation measures. ES.14, at ES-78 -103. With regard to the safety impacts at grade crossings, the DEIS directs DM&E to "develop adequate grade crossing safety plans to minimize traffic delay and improve vehicular safety at grade crossings and submit these plans to the appropriate state and local transportation agencies for the review and approval." ES-78; DEIS, Vol. IV, chap. 7 at 7-11.. The DM&E is further instructed to consult with the Federal Railroad Administration ("FRA"), state departments of transportation, and appropriate local agencies to develop a priority list for upgrading grade crossing warning signals on the existing line. Id. Mitigation for possible delays in emergency vehicle response includes consultation, coordination of train movements with emergency response centers, and discussion of possible installation of a real-time train location monitoring system to connect grade crossing warning devices with nearby traffic signals and to provide a display in the local emergency response center showing the position of the grade crossing warning signals. DEIS, Vol. IV, at 7-12. To address noise impacts, the DEIS would have the DM&E consult with interested communities along its new and existing rail lines "to identify measures to eliminate the need to sound train horns consistent with Federal Railroad Administration standards." Id., at 7-26 and -27.

#### The Department's Position

The Department supports the basic approach followed in the DEIS: that affected communities and the DM&E should develop mutually agreeable mitigation measures. However, DOT believes that the Board should go further and be more explicit in establishing parameters and assigning ultimate responsibility for such mitigation. Communities facing these impacts have a right to expect that the party responsible for them will be required to take concrete steps to ameliorate those impacts that may be reasonably addressed. We do not mean that the STB should demand that DM&E do whatever is necessary to keep rail-related noise, vibration, and delays to their pre-project levels, regardless of cost. Nor do we envision that relevant communities would be able to insist that DM&E pay all costs and take whatever operational measures would be necessary to address problems without any contribution by those communities. We do intend that the railroad and affected communities should meet, realizing that the former bears the onus of undertaking all

reasonable measures and expenses to reduce in significant respect the major adverse effects of its proposal, and that the latter must cooperate and contribute to the resolution of the identified problems.

Pending FRA rules are pertinent on both the safety and noise issues presented in this proceeding. Historically, there has been no federal requirement for trains to sound their horns when approaching grade crossings. State and local governments have prevailed in this matter; some have chosen to impose such a requirement, while others have mandated that carriers *not* blow their horns in order to preserve a relatively quiet environment. Last year, however, FRA issued a proposed rule that would require the use of locomotive horns at highway-rail grade crossings as a general rule. 65 Fed. Reg. 2230 (January 13, 2000). FRA is working to respond to public comments and to complete the rulemaking process later this year.<sup>1</sup>

An integral element of the proposed rule is the existence of exceptions to the mandatory use of train horns. FRA has proposed to permit the creation of "quiet zones" where supplementary safety measures are put in place that would obviate the need to sound train horns.<sup>2</sup> The regulatory proposal generally places the burden of implementing quiet zones on local authorities, consistent with their ongoing responsibility for identifying and addressing safety issues at grade crossings.<sup>3</sup> The instant situation is very different, however. The impacts in this case stem not from growth over time on an existing or incrementally changing rail system, but from truly substantial increases in rail traffic advanced by a carrier due to a specific proposal that is within the Board's purview. Therefore, the DM&E should have to do more than merely "identify alternative safety measures" to address the consequences its project would bring. ES-81. The STB should clearly state that the rail carrier is responsible for implementing and/or

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<sup>1</sup> / Of course, we cannot now predict the contents of the final rule, which the new administration must have the opportunity to consider. Nonetheless, FRA's proposals remain a sound reference point for determining railroad and community responsibilities generally.

<sup>2</sup> / These include such things as four quadrant gates, flashing lights, channelization measures, elimination of at-grade crossings, grade separations, etc.

<sup>3</sup> / Section 20153 of title 49, U.S. Code, requires that this rulemaking be conducted and specifies that acceptable alternatives to use of the train horn are those meeting certain requirements that are "provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail crossing...."

providing much of the funding to implement these ameliorations as necessary to provide the foundation for supplementary safety measures.

The DM&E and the relevant communities may of course negotiate the specific improvements required. The Board's final decision should clearly indicate the responsibility of both the carrier and local jurisdictions seeking financial or other contribution from the railroad to be reasonable in their efforts to establish quiet zones. For example, the communities could not expect that each in a long series of grade crossings would itself receive necessary enhancements at the carrier's expense; they could be called upon to provide information or assistance on those crossings that are particularly important to the life of the community. Nor could DM&E simply insist that communities sacrifice important traffic patterns and mobility as the price of quieter operations. The railroad should be required to fund only reasonably necessary improvements, not merely whatever improvements the community might desire as a first option. However, the Board should require that when increases in rail traffic would subject significant number of residents to excessive noise absent establishment of a quiet zone, the carrier should provide reasonable compensation to the locality (through cash or in-kind services) for the implementation of quiet zones meeting FRA requirements.

FRA will be pleased to work with communities, responsible state and local agencies, and the DM&E in order to help develop quiet zone recommendations in the affected communities.

Respectfully submitted,



ROSALIND A. KNAPP  
Acting General Counsel

March 6, 2001