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March 6, 2001

Attention: Victoria Rutson

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
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Washington, D.C. 20423-0001

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Public Record



Comments on the Draft Environmental Impact Statement - Finance Docket No 33407
Dakota, Minnesota and Eastern Railroad Corporation
Construction into the Powder River Basin
Powder River Basin Expansion Project

SIMPLE STATEMENT

I believe you need to do a supplemental DEIS to address the many deficiencies in content of the DEIS and inadequate procedures followed by the STB. I support the no action alternative.

The Council on Environmental Quality (CEQ) regulations say:

1502.9 Draft, Final and supplemental statements.

....(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns;
or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact"

(40 CFR Ch V. 1502.9)

Abbreviations:

The following abbreviations will be used. Others may be added as this text progresses.

DM&E for Dakota, Minnesota, & Eastern Railroad Corporation

STB for Surface Transportation Board

DEIS or **DEIS DM&E**

will be used for the "Draft Environmental Impact Statement - Finance Docket No 33407
Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin,
Powder River Basin Expansion Project"

USACE for US Army Corps of Engineers

FS for the Forest Service

USFWS for the United States Fish and Wildlife Service

MISCELLANEOUS QUESTIONS:

1. Rapid City Cement Plant

The State of SD recently sold its state owned cement plant at Rapid City to a Mexican company.

Please improve the analysis by explaining

1. How much cement is expected to be poured to build the DM&E expansion and is the cement plant at Rapid City the expected source of cement? How much revenue will accrue to the owners of the cement plant?
2. Will the amount of cement required for this construction require large scale mining of limestone reserves and where will mining occur?
3. Will the Cement Plant move to its property near Dewey Wyoming, to either have better access to the rail lines under construction or have access to more limestone?
4. Was the sale of SD Cement Plant from public to private ownership an indirect impact of the DM&E proposal?
5. Will the move to Dewey and the development of the southern quarry be a indirect impact of this rail road? If so please discuss the development of the new southern cite as an indirect or cumulative impact.
6. Was the sale of the state owned SD Cement Plant consistent with the public interest?

2. Foreign Investors

1. To what extent are the rail lines, coal companies, cement plants, utilities, construction companies etc, (who may be the only entities to benefit from this project), owned by foreign investors?

PROBLEMS WITH THE NEPA PROCESS THUS FAR

1. Environmental Justice & Process

A. The STB is requiring that comments over 5 pages long be sent in with 10 copies. It should realize that many of the people impacted live in rural areas where xerox machines may be harder to get to. Some may be poor and transportation may be unreliable, especially in winter. The public should not be required to send in 10 copies of comments on a DEIS. It is not consistent with environmental justice directives for you to ask the public to send you 10 copies of comments over 10 pages.

B. The STB apparently did not publish many extra DEIS's or reserve a pile of summaries to circulate. I believe persons who did not request a copy in advance had difficulty getting a copy. The STB was willing to make CD's available or refer persons to the web site or allow persons to travel to libraries. This reliance on computers and travel once again disenfranchises the poor from participation..

2. Availability of documents and style

Even if a person has a computer, reading multiple volume large DEIS's on a CD is a pain. You can't flip back and forth to find charts and maps and other references. You can't have several volumes open at once. You can't read from open text while typing. You can't skim quickly by flipping pages. Federal agencies in general should stop relying on CDs to save money on printing large, multi volume DEIS's.

Not everyone has a computer. The lack of extra printed DEIS's and summaries caused the STB to be in viola-

tion of 40 CFR Ch. V 1502.19 (a) & (c). The USACE documents also had very limited availability.

The DEIS documents are difficult to read. The Army Corp of Engineers documents often present matters more clearly. Their maps are better.

3. Involvement of affected Cities.

I request that the DEIS be more specific on how it consulted with towns along the rail route.

Please describe the direct communications to each of the following towns or their counties:

Minnesota:

Winona, Stockton, Lewiston, Utica, St. Charles, Dover, Eyota, Chester, Rochester, Byron, Sawaue, Marion, Simpson, Kasson, Dodge Center, Claremont, Havana, Owatonna, Meridan, Waseca, Janesville, Smiths Mill, Eagle Lake, Mankato, Le Hillier, Judson, Cambria, New Ulm, Essig, Sleepy Eye, Cobden, Springfield, Sanborn, Lamberton, Revere, Walnut Grove, Tracy, Garvin, Dalaton, Tyler, Lake Benton, Verdi,

South Dakota:

Elkton, Aurora, Brookings, Volga, Arlington, Hetland, Lake Preston, De Smet, Manchester, Iroquois, Cavour, Huron, Wolsey, Wessington, Vayland, St. Lawrence, Miller, Free Heights, Highmore, Holabird, Harrold, Blunt, Canning, Pierre, Fort Pierre, Capa, Midland, Phillip, Cottonwood, Quinn, Wall, Wasta, Smithwick, Edgemont,

Cities along existing route: Owanka, New Underwood, Box Elder, Rapid City, Hermosa, Fairburn, Buffalo Gap, Oral,

Wyoming:

Dewey, Newcastle, Osage, Upton, Moorcroft

I have flipped through the appendix. I see notices of public meetings for a subset of affected towns, I see press releases in papers and notices in papers, but did the STB ever write the **all the mayors and counties and Tribes** along the route directly? Did each town receive a

1. letter during scoping,
2. an announcement of the availability of the DEIS or
3. the DEIS or a summary itself? (If it did not this violates 40 CFR Ch V 1501.7(a)(1))

I have found a record in the DEIS that indicate that a notice of availability of the DEIS was sent only to some impacted towns/counties but not all. This violates 40 CFR Ch. V 1502.19(a), which requires **the document itself** not a notice of its availability be sent to all local agencies which enforce environmental standards. and 1503.1(2)(1) which requires you request the comments of local agencies which enforce environmental standards.

The DEIS indicates that it only provided by-passes for cities/towns if the cities/towns asked for a by-pass by a certain deadline. Did the STB write **each** City/Town directly notifying them of expected increase in rail traffic and stating that if they didn't propose a by-pass by the deadline the STB would not consider a by-pass for their town? If the cities/towns are to design by-passes this makes them like cooperating agencies. I can find no copy of a letter to each City asking that City to be a cooperating agency in designing the route of the STB.

The DEIS identifies many negative impact to towns through which the coal trains will pass.

By passes would mitigate or partially mitigate many of these concerns. It is the duty of the STB, not the impacted towns, to draft alternatives to address the conflicts between the interests of town/city dwellers and the railroad's/utility companies shareholders. The STB should add additional alternatives with more by-passes in more towns/cities.

Further more Cities/Towns can provide information about proximity of rail lines to special town resources such as parks, hospitals, nursing homes, schools etc. Please inclose a chart that displays the number of special town resources that are near the rail lines.

Better details should also be provided on communications of the STB with tribes.

4. Failure to identify preferred alternative

The CEQ regulations required the STB to pick a preferred alternative. The STB picked C generally but has presented all these sub-routes within alternative C about which it had no preference.

5. Failure to identify connected actions

"connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they ...(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously (40 CFR 1508.25 (a)(1))"

- a. Increased coal train traffic along the other rail lines after Winona is a connected action that needs to be discussed.
- b. Increased barge traffic on the Mississippi is a connected action that needs to be discussed.
- c. The mining of limestone by the SD Cement Plant and any related changes in the operation of the Cement plant need to be discussed. The mining in all the gravel quarries along the route need to be discussed. Source areas where fill/gravel will be excavated to improve rail lines needs to be disclosed.
- d. The STB allowed the DM&E to prepare documents about its section 404 compliance for the USACE. This document had only limited availability. The USACE granting of 404 permits is obviously a connected action. Could the STB please explain how it believes the CEQ CFRs allow it to separate out documents on 404 permits from the main DEIS and make their availability so limited?
- e. The State environmental agencies are going to have to grant NPDES permits for Storm Water Discharges from Construction Related Activities. Granting these NPDES permits are also a connected action. Where are they discussed in the DEIS, if at all? Will they be general permits or individual permits? The Bad River in SD is on the 303 (d) list of impaired waters for the state of SD for accumulated sediment. The Cheyenne River is impaired for TSS and TDS near Edgemont and TSS near Plainview and Wasta. The Cheyenne River may have a T & E species (the sturgeon chub) within the next month. How can the railroad get a NPDES stormwater permit for a new point source discharge to impaired rivers? How many rivers in Wyoming and Minnesota are on their 303 (d) lists of impaired waters? Please display information on the water quality condition and recent records of all to be impacted streams. Doesn't the clean up impaired waterbodies need to succeed before the DM&E can get a new NPDES permit to discharge to the impaired waters? Will an application for a new stormwater discharge NPDES permit on an impaired water force the state to develop TMDLs for that stream, if it hasn't already?

6. EPA as Cooperating Agency: Storm Water Discharge Permits for Construction Related Activities.

Given the extensive amount of ground to be disturbed, a major impact will be sediment run off during construction. The EPA is responsible for the Clean Water Act - storm water NPDES program - should they be a cooperating agency?

7. Inconsistent with the public convenience and necessity

A. Incorporation by Reference:

In my scoping letter dated July 8, 1998 "Nancy Hilding's scoping comments on the Draft EIS of Dakota, Minnesota and Eastern Railroad Corporation's Application" I explain at length about how the STB could not separate out the "transportation merits" from the environmental concerns. I incorporate my July 8th letter to the STB, Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Also Victoria Rutson by reference.

I also incorporate by reference my June 10, 1998 letter Before the Surface Transportation Board, on Finance Docket No. 33407, the Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin. Nancy Hilding's comments in opposition to Dakota, Minnesota and Eastern Railroad Corporation's Application.

B. Discussion

The CEQ regulations at 40 CFR Ch V.1508.14 define the Human environment as follows:

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (See the definition of "effects" (1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. ((40 CFR Chapt V. 1508.14)

Unfortunately the STB believes it can separate out "transportation issues" from "environmental issues".

"This schedule provides for issuance of a decision within 180 days of the effective date of this decision that will address the transportation issues relating to this construction application and whether the proposal satisfies the criteria of 49 U.S. C. 10901. Any approval would be conditioned upon completion of the environmental review process and consideration of environmental issues, which would be considered in a final decision on whether to authorize the construction." (page 1, *Surface Transportation Board Decision on STB Finance Docket No., 33407, May 7, 1998*)

The factors the STB uses to decide on whether a rail project is not inconsistent with the public convenience and necessity are economic and social effects and belong within the EIS process. How can you know what mitigation will be required until you do the EIS? If you don't know what mitigation is required, you don't know how much the project will cost? If you don't know how much the project will cost, how can you determine that the railroad can afford it? If you haven't examined all the negative impacts, as well as positive benefits, with full public input and review, how can you decide that it is not inconsistent with the public convenience and necessity?

The STB with their "cart before the horse" legal proceedings, force opponents of the railroad into massive spending of resources on legal battles prior to the draft EIS. They spend Surface Transportation Board staff time reviewing all the material filed on the docket in the administrative proceeding. They waste a lot of people's time and money prior to the DEIS publication, .

An EIS process must review all impacts including socio-economic (transportation) impacts before you can conclude that DM&E project will benefit the public and will satisfy the 49 U.S.C 10901 criteria.

If there is a conflict between your regulations and NEPA or the Council on Environmental Quality regulations (CEQ), NEPA and the CEQ regulations take precedence. By making a conditional decision on these issues prior to the DEIS you violate the following provisions of the Council on Environmental Quality regulations:

(1) Analysis must be performed before the decisions are made and actions taken and public comment must be an essential part of NEPA:

"NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken" (40 CFR 1500.1(b))

(2) The CEQ regulations say a major federal actions can't be taken that will prejudice the ultimate decision:

"(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (1506.1)" (40 CFR Ch. V 1502.2 (f))

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of the proposed agency actions, rather than justifying decisions already made." (40 CFR Ch. V 1502.2 (f) & (g)).

40 CFR Ch. V 1506.1 (c) says

"While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:...

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives."

There are many NEPA requirements about high quality scientific review and, the public is supposed to have access to this review prior to actions being taken.

a. Failure to obtain the information necessary to assess impacts to the human environment (40 CFR 1500.1 (b), 1502.1, 1502.15, 1502.22)

b. Failure to respond to public comments and concerns (40 CFR 1503.4 (a))

c. Failure to analyze and disclose direct, indirect, and cumulative impacts with scientific and professional integrity (40 CFR 1502.16, 1502.24)

One of the alternatives is always the no action alternative. When you decide that the DM&E's application is "not inconsistent with the public necessity and convenience" you are making a decision about some relative benefits/harms of impacts of the project and limiting the range of mitigation costs (ie- you have decided what DM&E can afford to spend) before the DEIS is made

Does the DM&E have any grandfathered in rights that came into being as of the date of the conditional approval rather than the effective date of the final approval?

The STB is required to develop the EIS and other planning documents simultaneously. 40 CFR Ch. V. 1501.2 says:

"Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analysis. Environmental documents and appropriate analysis shall be circulated and reviewed at the same time as other planning documents.

1508.23 Proposal.

"Proposal exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.(40 CFR Chapt V. 1508.23)

Adjudication can't happen until after the EIS. Preliminary hearings are just supposed to cover what should be in the EIS: 40 CFR Ch. V 1502.5 says:

"An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (1509.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made (1500.2(c), 1501.2 and 1502.2).....

(c) For adjudication, the final environmental impact statement shall normally precede the final staff rec-

ommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearing designed to gather information for use in the statements." (40 CFR Ch. V 1502.5)

The Surface Transportation board could have had a hearing to decide whether the DM&E and the STB should proceed with an EIS analysis of DM&E's application and what should be in the EIS and what agencies should cooperate. It can't make decisions about "transportation merits", "transportation issues" or public convenience and necessity" until after the FEIS.

PURPOSE and NEED

A. Deregulation of Utilities in Mid West

In the DEIS Volume VI Appendix A at page A-71 it states:

"DM&E claims that it would benefit from the newly deregulated electric utility industry, because competitive pressure to be the low-cost producer of electricity would create a need for competitive rail service and lower deliver cost per million BTU. "

At Vol 1 page 1-10 the second aspect of the purpose of the DEIS is alleged to be to further National Energy Policies. The DEIS spends a few pages discussing the deregulation of the electric utility industry and how this is important to the DM&E plans and its profits.

Please improve the analysis in the DEIS by including a discussion of the downside of deregulation of utilities.

A. Please specifically clarify the "affected" environment section

1. By disclosing how many of DM&E utility clients have been or can expect to be deregulated.
2. Please discuss how deregulation has been shown to hurt utility consumers in California
3. Please discuss how utilities are monopolies, even when regulated or deregulated. Please discuss the homeowner/consumer can't shop around for a utility company with the best rate. How does cheaper coal for deregulated utilities benefit them?

B. Please improve the analysis of the impacts of the project in the DEIS by

1. Evaluating whether a cost saving to deregulated utilities via their expense for their coal supply will ever be passed on to consumers. - What is the benefit to the public of cheaper coal to midwestern utilities if savings is not passed on?
2. Does the STB have any authority to require that any cost savings by utilities from cheaper coal is actually passed on to consumers?

C. Please consider the performance of deregulation in California as significant new information that discredits your purpose and need for the proposed project and your choice of alternatives. Please see it as a reason for a supplemental DEIS..

1. If deregulation of utilities does not result in utility savings being passed to consumers, how can the delivery of coal at a cheaper price be in any way in the "public interest". In a deregulated environment is savings in cost of coal to utilities, merely in the share holders, energy wholesaler's and middleman's interest?

I suggest the experience of deregulation in California makes a fairy tale (or nightmare) of pages 1-10 - 12 of the DEIS. These pages must be rewritten to include the California experience and the effect it has had on plans to deregulate our nations electric utilities and on DM&E's and the public interest..

B. Scrubbers

The DEIS concludes that it is more expensive for utilities to install scrubbers than install blast furnaces which would burn low sulfur coal. Please look at the overall expense of shipping low sulfur coal and the environmental justice issues. With scrubbers the people who benefit from the electricity pay the cost of cleaning up the air. In the railroad expansion all the small towns, ranches, home owners, public land users, wildlife, riparian

areas etc pay the price, but they don't benefit from the project.

And if you looked at the overall cost - is installing scrubbers really more expensive? Please improve the discussion on pages 1-12 in the Purpose and Need section to look at over all costs of delivering coal. Consider the costs to locals, when financial losses such as lower property values and delays to persons waiting at crossings are considered. If the objective is to clean the air in the most cost effective way, the DEIS must look at all the costs associated with the development of the rail line not costs to utilities in the midwest. Also, is it an objective of the Clean Air Act to trade harm to riparian areas, wildlife, roadless areas, air quality in distant locations, in order to save money on air pollution controls in another location? Once again will savings in using cheaper coal, instead of scrubbers be passed on to consumers or merely line the pockets of investors? Does the STB have any way to guarantee that the savings is passed on?

C. Safety

The discussion of safety begins at pages 1-7. This discussion needs to note that Pierre Shale in a "heaving bedrock" unit and that the swelling/shrinking it experiences. Heaving, shrinking and swelling of a rail line poses a threat to rail bed stability and operational safety. The DEIS needs to look at train derailments experienced by DM&E as a function of soil type. It then needs to look at the soil types in the area proposed for new construction. Will the DM&E create more train derailments by extending the railroad over more unstable soils?

Will avalanches from failing shale slopes create safety hazards?

The DM&E seems to confuse net safety efficiency with net safety. Improved rail lines with no change in traffic would increase safety. But improved rail lines accompanied by an increase in train traffic - more trains at greater speeds - does not necessarily reduce the net number of mishaps. There will be more train hours and thus more opportunity for accidents. Will increased train traffic at increased train speeds create more accidents at rail crossings involving trains and local people? Will increased traffic kill more livestock and wildlife? Will increased traffic cause more fires along the route? Will we really see a reduction in derailments, collisions & fires?

Please improve the discussion on pages 1-7-9 about safety to differentiate between an improvement in the rate of incidents per train hour and the total number of incidents to be expected each year.

The local people don't need the coal, so what benefit to them is brought by 34 new coal trains a day? Does our risk of accidents go up and we get nothing back in exchange?

CHANGES to ALTERNATIVES

New Alternatives:

A.. Please provide 2 new alternatives for by-passes of towns:

1. Please provide an alternative in which every town, which is cut into parts by the existing rail line, is given a by-pass.
2. Please provide an alternative in which you increase the number of towns with by-passes; give more than the 4 towns mentioned in the DEIS by-passes, but not every town. Please develop some way of ranking towns for need of by-pass - such as or traffic at crossing, number of residences/businesses effected, the special aesthetic quality or historic or tourism value of a quiet downtown area etc..

B. Please include an alternative which is to relying on the DM&Es application to the federal government for a loan for class 3 railroads to fix up their tracks. I believe DM&E has submitted such a loan. If it is granted the loan, this will address some of the purposes identified for the project, without many of the negative impacts.

Many people would agree that maintaining the existing line is in the public interest, many do not agree that a new rail line designed primarily to make coal cheaper to utilities is necessary and in the public interest.

C. Please include an alternative in which the utility companies that need to meet the new mandates of the Clean Air Act install pollution control devices (scrubbers) to clean up their emissions.

D. Please include an alternative in which one of the other rail lines purchases the DM&E route and uses it as a return westbound line for coal cars on the way back to the Powder River Coal Fields.

E. Please review an alternative where the state forms a railroad authority and takes over the DM&E or parts of the DM&E.

F. Please include a alternative in which DM&E gets trackage rights to BNSF or UP track to gain access to the coal fields.

G. Please review native american concerns and propose an alternative that addresses their issues.

Modify existing alternatives:

A. Increase the number of railroad crossings where there are grade separations and warning gates

B. Require the railroad to reimburse nearby property owners whose property is not directly impacted, but who will lose property value when the railroad is built.

C. Please include an alternative in which the trains are slowed down and some of the construction design constraints suggested by DM&E are relaxed.

D. Require the DM&E to make contractual guarantees that it will improve service to grain shippers

E. Require the DM&E to make contractual guarantees that it won't back haul solid/hazardous/toxic/radioactive waste.

MITIGATION

The DEIS fails to provide an adequate range of mitigation. The following mitigations should be added:

1. The DM&E must compensate nearby property within 1 mile of the train for any decreases in their appraised property value due to change of the rail route traffic from 3 trains per day to 37 trains per day.
2. The DM&E should pay churches, towns and cities their costs in moving special resources such as schools, churches, nursing homes etc out of the industrial corridor created by the new coal train.
3. The DM&E should pay property owners whose property was confiscated and bisected a tariff based on traffic on the route.
4. The STB should create a rancher run oversight board to insure ranchers are adequately compensated for fires, run over cows, weeds etc.
5. The STB should encourage the states to clean up antiquated railroad law out of their statutes, prior to allowing the project.

Comments about mitigation:

Volume IV at page 7-20 in the section on Mitigation says:

"Applicant shall obtain all necessary Federal, state and local permits required by the U.S. Army Corps of Engineers for storm water discharge resulting from this project, including National Pollutant discharge Elimination System permits for project-related construction or reconstruction activities."

The storm water NPDES program is administered by the EPA not the Army Corps of Engineers. On private property in the states the authority to issue NPDES permits has been given to the states, on reservation lands the authority is retained by the EPA. Given the amount of surface disturbance expected, should the EPA be a cooperating agency?

I suggest that the railroad be required to obtain individual stormwater discharge permits for construction and industrial activities for this project, rather than rely on general permits.

A 50 foot distance between staging and laydown yards and waterbodies is not far enough away.

A 25 foot distance between fueling areas and water ways is not far enough. (Vol IV- 7-21)

Applicant should be required to pay for an independent agency/contractor to collect base line data on water quality in water bodies that will be at risk before DM&E begins to disturb surfaces.

Applicant should be required to reseed/revegetate with native plants and native seed mixes. The railroad should not introduce exotic plant species. Hay bales used in erosion control poses a risk of introducing weed seeds and should be minimized.

There should be more restrictions placed on herbicide application. The trains may eject herbicides from wings on the sides of passing trains, which is a very crude way of application. In addition to waterways, areas with special rare or valuable plants and rare animals should be protected from abusive herbicide application.

The trains should not be allowed to spray in such a manner that herbicides will drift to adjacent landowner properties. The DM&E should notify adjacent land owner when spraying is anticipated.

Applicant should pay for surveys for any plant or animal species the state game and fish or state heritage programs or USFWS or tribes are worried about. Applicant should survey for nests of all bird species of concern to state threatened and endangered programs, not just raptor nests. Project should watch for swift fox dens and burrowing owls in prairie dog towns. Applicant should do a survey for sturgeon chub in the Cheyenne and its tributaries.

If the DM&E wants to protect nests and dens it should have timing restrictions during key nesting/breeding seasons.

the paleontological protections should apply to private lands as well as federal lands. Paleontological finds on confiscated private property should belong to persons whose property was taken by DM&E.

CUMULATIVE IMPACTS SECTION

1. Sturgeon Chub and Cumulative Impacts

I believe the USFWS is under court order to have a decision on the listing proposal for the Sturgeon Chub by April 1, 2001. The Sturgeon Chub currently existing in three drainages in our region that have experienced recent major development projects: ie

1. coal bed methane development in Wyoming in the Powder River Drainage,
2. the giant hog farm complex at Rosebud in the White River Drainage and now
3. the DM&E proposal in the Cheyenne Drainage.

Please review the cumulative impacts to the Sturgeon Chub of all these recent & proposed developments. Please also consult with Sturgeon Chub experts on the habitat requirements of the species and improve the descriptions of their requirements that is provided in your DEIS and USACE documents. Please especially review its needs in relation to turbidity. Please specifically disclose any temporary or permanent modifications made to stream channels or water flows by the rail road in the segments where the fish are.

2. Vol IV - table 5.1-1

Summary of Effects - Please add these effects to the charts

Impacts to water quality will continue after construction from soil runoff from exposed slopes. Also spraying of herbicides along right of ways will result in water quality issues, as can fires caused by trains. Will trains leak oils and solvents onto the rail bed?

National Park Service lands will be effected due to lost air quality and noise traveling to adjacent national parks.

In eastern SD there are a lot of SD Game and Fish lands for the protection of wildlife near the railroad. Are some of the waterfowl production areas managed by USFWS? Please include effects on special state owned lands and city or county parks/refuges/open space.

The Socio-economic effects in this chart are all positive. There is no discussion of negative socio-economic effects.

Please include the discussion of impacts to any historic downtown areas near the railroad.

IMPROVE ANALYSIS

1. In the FEIS include some large colored maps. Many of the maps in the DEIS show overlapping lines of similar linetype. The maps displaying more than one alternative are too small and crowded to read.

2. Display all the waterbodies that can be effected that are

1. impaired and on 303 (d) lists and
2. all the Outstanding State Resource Waters; the states highest class of waters with the highest water quality standards, where existing water quality must be maintained and protected.

3. Display windroses for the staging and marshalling yards. Display windroses near National Parks, State Parks, Wildlife Refuges and Roadless Areas.

4. Tourism objectives - Please list all tourism objectives within the rail lines path - please disclose any impacts to

1. Wall Drug-/National Grasslands Visitor Center - tourism district in Wall SD
2. Laura Ingalls Wilder tourism area in De Smet, SD
3. other private/non profit tourism resources.
4. Public land resources such as
 - roadless areas,
 - wild and scenic rivers or other special protections for special water bodies
 - city/state parks, federal parks
 - waterfowl or game production areas etc.

5. Historic districts.

Discussion of historical and cultural issues seems to be limited to native american concerns.

Please improve the discussion of the architectural and historic values of the "old town" areas that are often adjacent to the old railroad lines. How many unique, special or historic buildings built by caucasian culture occur near the railroad? How many "old town" districts maintain historic character? How many museums, are near the rail lines? Will the unpleasant industrial ambiance of the coal train corridor damage their special values?

6. Special gathering places

How many village greens, gazeboes, parks, baseball fields, golf courses, city open space, community centers, auditoriums, theaters, dance halls. senior centers etc occur near the rail lines

7. Places of Reverence

How many places of spiritual significance are near the rail lines: Please inventory

1. native american sacred sites
2. churches
3. cemeteries
4. memorials

8. Sensitive businesses

How many businesses are near the rail line that would be negatively impacted by noise, dust, vibration and delays at crossings?

9. How many towns have jails, hospitals, schools or nursing homes near the rail line?

10. Justice - Archaic laws to benefit railroads.

In SD there are laws still on the books that give protections to railroads that are outdated and may be remnants from union busting days. Please review the legal environment in each state to see what benefits and authorities are assigned to railroads by old laws.

Does each state still allow the railroad to have police with various police powers not normally given to private entities? Does each state still have laws that make causing minor property damages to railroads felonies? One of the mitigations proposed has to do with DM&E building fences. Does the STB realize that SD has a law about who pays for fences along railroads? Please review these laws that give railroads special protections/rights in an appendix

11. Please provide a section where you explain the treaties with the Lakotas and address the concerns raised by the tribes in our region..

12. On the ground surveys of areas to be impacted for plant and animal species of special concern should be conducted and placed in an appendix of a supplement to the DEIS.

13. The Forest Service in developing its DEIS on the Revision of National Grasslands Land and Resource Management Plans did a lot of biological work in the area to be impacted by the new construction. Could some of its biological data be brought over to this document? For example in the oil and gas section the FS talks about disturbance to wildlife from roads and construction and sets distances away from nests and areas of No Surface Occupancy and other lease stipulations designed to protect wildlife from construction disturbance in relationship to oil and gas development.

14 This DEIS should disclose the distance to any special interest areas identified in any alternative of the grassland plan revision DEIS.

15. Does the DEIS discuss the DM&E's public debt, DM&E's past and present public subsidies, any loans the DM&E has applied to public entities for and variances it has in terms of how its employees are treated? If it doesn't it should.

16 Does the DEIS discuss somewhere the raging debate about whether the service to local SD shippers of non coal products will really improve? Does it cover the assertions by critics that the coal train will be so busy that other non-coal freight will become a second class shipper? Does it discuss the actual miles between grain shippers and grain consuming centers under the various alternatives? If it doesn't it should.

BIZARRE CATEGORIES FOR SOCIO-ECONOMIC EFFECTS

The economic discussion needs improvement. The DEIS displays a bizarre sense of categories. Positive economic impacts from the rail line are considered in the Socio-economic section and the purpose and need, but negative financial impacts end up in categories like residential, business, land use, agricultural.

The socio-economic section is just about positive financial/social impacts. It needs to review negative financial/social impacts also.

If a person works for three years to pay off the debt on his house and the DM&E proposed coal train comes by ruins the neighborhood and drops his property values, this is apparently (according to the DEIS) not an economic impact but it is a residential impact. But if a construction worker is employed for three years this is a socio-economic effect. Apparently if a rancher's ranch is cut in two and this creates operational hardships for his business (ranching), this is an agricultural impact, not a socio-economic impact.

I believe these bizarre categories may be a hold over from the inappropriate separation the "transportation issues" and "environmental issues" by the STB. The entire economic impacts and purpose and needs section needs to be reworked to balance negative financial/economic harm to residents along the route with financial

benefits from operation/construction of the railroad within the same category and on the same comparison charts.

Perhaps a non-biased sub contractors should be asked to do the socio-economic section.

The STB should provide us with a chart of the economic hardships and loss created by the project juxtaposed with the economic benefits/gains. This chart should display the interest group getting the benefit/harm and an estimated dollar cost for the benefit/harm

A. Delays

Please assign a monetary value to the following costs accumulated for each year for all the towns:

Direct costs of delays

1. Costs to businesses of employees/business owners waiting in cars held up at train crossings
How many dollars of employee wages will be wasted per year in WY, SD & Minnesota for employees/owners to wait at crossing?
2. Costs to families for homemakers and handy dads to waste time waiting at crossings, instead of working productively for family.
3. Cost to families of lost recreation time.
4. Costs in day care payments for parents to wait at crossings.
5. Costs of delays for ambulances, in terms of lost life and health?

Indirect costs of delays

1. Costs to business when staff waits around for a late client being held up at train crossing
2. Cost in time to early client who arrived at appointment early in order to insure they are not late due to train delays
3. Cost to a competitive business, when potential client shops on the other side of town rather than risk having to wait at the crossing.
4. Cost to any competitive business who ends up permanently being on the "wrong side of the tracks".

WHERE THE ABOVE E FINANCIAL LOSSES CONSIDERED BY THE STB WHEN IT CONSIDERED THE "TRANSPORTATION MERITS"?

B. Lost Property /Business Value

1. Calculate the loss of value of houses/ranches/businesses near the railroad who are now in an industrial railroad zone. What will be the net loss in property value to all the owners in SD, WY and Minn who will receive no reimbursement for their decreased values?
2. Calculate the impact to towns who become unattractive places to live due to excessive train traffic and who lose the ability to attract new businesses or new residents and will the town atrophies & die?
3. Will low income ghettos spring up along the industrial zone created by the railroad?
4. Will tourism properties lose tourism value?

C Ranches and Farms

Are the dollar losses created by hardships to ranch and farm operations quantified somewhere? If not those hardships should be listed and the estimated losses should also be quantified

D. Temporary vs Permanent.

The railroad construction will create jobs (dollars) in the short term, however the railroad will delay persons at crossings and cost them time (dollars) for the long term. Please compare the short term job revenues gained with the long term cost in peoples lost time waiting at crossings or operating ranches.

E. Busy rail lines

Various critics of the project say that the lines will be so busy hauling coal, that the service to non-coal freight

shippers will not improve. Is there discussion of this issue in the DEIS somewhere?

F. Experiences of other Coal Lines

Does the STB have data from the experience of other coal lines (in Nebraska and ND) about impacts of a heavy traffic coal line on local towns.. Do towns bisected by coal trains grow or atrophy? Do they develop "ghettos" or depressed neighborhoods next to rails? Do some individuals/businesses in the town make more money, while others suffer financial hardships? Does non-coal freight get improved service when the line starts hauling coal?

ENERGY POLICY and THE PUBLIC INTEREST

Please re-evaluate the assumptions that underlay the purpose and need section. Fossil fuels are not a renewable resource. Please improve the analysis by talking about cross generational responsibility. If previous generation consume all the fossil fuels, what will our descendants use to heat their houses and run their transportation systems in the future? Reducing costs of energy may increase the rate of consumption. Leaving energy costs high, may encourage energy conservation and the switch to alternative energy sources. This may slow the rate of consumption of fossil fuels and leave more fossil fuels for the descendants. The STB's belief that a rush to develop coal is in the public interest is anachronistic. Greenhouse effect and global warming also complicates things.

Low sulfur coal is not the only solution to air pollution. Utilities can install pollution control equipment to clean up their emissions.

The STB seems to think that if someone is willing to pay to ship a cargo, building a rail line is in the public interest. If the mafia applied for a rail line to ship marijuana and opium would the STB think it was in the public interest (meets 49 U.S.C 10901 criteria), as there was a client willing to pay shipping costs and a public willing to buy and enjoy the product?

Please improve the analysis by disclosing the alternate view on the public interest and coal development.

RISK of PUBLIC BAILOUT

Please improve the analysis and disclose:

What is the risk that the tax payers of SD will have to form a railroad authority to bail out a failed DM&E expansion project?

What is the risk that the tax payers of SD will have to pay for grade crossings, signals, gates and other devices to insure safety at crossings or reduce delays?

RETURN CARS

Please improve the analysis and disclose:

What is the risk that one of the competing rail lines will buy out the DM&E line and use it as a return haul route for empty coal cars and that the number of trains per day will increase and they will all be west bound?

What guarantees can any one give that the DM&E won't back haul some form of solid/hazardous/toxic/radioactive waste for disposal in the Pierre shale of SD.

Please review the history of various imported waste proposals that the citizens of western SD have fought for the last 25 years. The fears of people in western SD that more empty rail cars may result in more waste importation proposals is based on past experience.

COOPERATING & REVIEWING AGENCIES

The Bureau of Reclamation has taken a leadership role and said it supports the no-action alternative as the project will have negative impacts to its irrigation district.

I am a recreational user of the national grasslands. I value the wild nature of our grasslands and don't want them turned into an industrial corridor. Alternatives B & C both go too close to roadless areas and riparian areas, especially areas in the Cheyenne River Valley that are wild in nature. . Alternative B would effect a ferret reintroduction site. . The impacts on the multiple uses and the various users of the Grassland are negative. Grazing, recreation, watershed, potential wilderness and wildlife values will all be negatively effected. I hope

the Forest Service will also chose the no action alternative.

I hope the Army Corp of Engineers and the Coast Guard will also say no and protect our streams, wetlands and rivers from this railroad.

I hope the other cooperating federal agencies who have different mandates will support the no- action alternative. I hope the STB will choose the no action alternative.

If necessary perhaps the EPA will refer this DEIS/FEIS to the CEQ. Below is a quote from the CEQ regulations

"1504.1 Purpose

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal Actions that might cause unsatisfactory environmental effects. It provide means for early resolution of such disagreements.

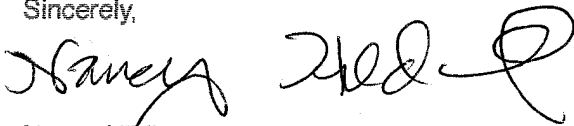
(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal Activities including actions for which environmental impact statements are prepared. If after this review the administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgements on the acceptability of anticipated environmental impacts.

These reviews must be made available to the President, the Council and the public." (40 CFR Chapt v. 1504.1)

I hope the EPA and the CEQ will study the NEPA violations created when the STB separated out its decisions on "transportation merits" from environmental issues. I hope the CEQ will review the STB NEPA procedures which allows for a separate administrative proceeding which results in a decision on some issues, that predates the DEIS.

Sincerely,



Nancy Hiding