

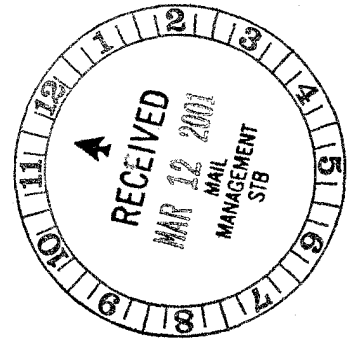


ER-00/758

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 7 2001



Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

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Dear Ms. Kaiser:

Reference: STB Finance Docket Number 33407, Powder River Basin Expansion Project

As requested, the Department of the Interior (Department) has reviewed the September 2000 Draft Environmental Impact Statement (DEIS) for the proposed construction and operation of new rail line facilities in Wyoming, South Dakota, and Minnesota by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E). The project generally is referred to as the Powder River Basin (PRB) Expansion Project. The Department offers the following comments for your consideration.

GENERAL COMMENTS

The Department would support the no-action alternative (alternative A). This alternative avoids the substantial, and in some cases unmitigable, adverse environmental impacts associated with all action alternatives. We have concerns related to all of the action alternatives. These concerns are described below.

The DEIS is inadequate in several respects. No evaluation pursuant to Section 4(f) of the Department of Transportation Act of 1966 has been provided in the document or in a separate document. The meaning of the term "environmentally preferable alternative" has been misconstrued throughout the DEIS and the identification of any alternative other than the no-action alternative as the environmentally preferable alternative is unsupportable. The DEIS fails to provide any analysis of the environmental impacts associated with transportation of coal and other commodities from the project terminus at Winona, Minnesota, to intended customers. There is no explanation of the expected duration of coal hauling from the PRB. These deficiencies should be corrected in the Final Environmental Impact Statement (FEIS), with the Section 4(f) evaluation being fully coordinated with the Department prior to completion and release of the FEIS. We believe that the no-action alternative is the environmentally preferable alternative but will continue to work with DM&E and interested agencies to address mitigation needed if the proposed project is eventually authorized. The U.S. Fish and Wildlife Service (USFWS) also will provide separate review and comment in conjunction with the U.S. Army Corps of Engineers' (Corps) Section 10 and Section 404 permitting process.

SECTION 4(f) COMMENTS

The DEIS includes almost no discussion of Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303). The only mention of Section 4(f) appears in discussion of impacts to the historic Missouri River bridge at Lake Sharpe. The National Park Service (NPS) has advised us that a Surface Transportation

Board (STB) staff person has stated that this law does not apply to the STB. We disagree because 49 U.S.C. § 303(a) clearly states, "It is the policy of *the United States Government* that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites [emphasis added]." While the STB may not be specifically named in Section 4(f), we believe that evaluation of this multistate transportation project is clearly within, and subject to the spirit of the law.

Section 4(f) provides that a transportation program or project that impacts parkland, wildlife refuges, historic sites, and other specific areas may only be approved if there are no feasible and prudent alternatives to the use of such land, and unless the project includes all possible planning to minimize harm resulting from the use. A use can occur not only when land from a Section 4(f) site is acquired or occupied for a transportation project but also when the proximity impacts of a project are so great that the purposes for which the site exists are substantially impaired (often referred to as "constructive use").

We request that prior to completion of the FEIS, the STB provide to the Department for review and comment a draft Section 4(f) evaluation containing a determination of the Section 4(f) status of all lands and properties subject to Section 4(f) that could be adversely impacted, directly or through constructive use, as a result of the proposed project.

If determined that the project will adversely impact lands or properties subject to Section 4(f), a specific Section 4(f) finding should be coordinated with the Department and appropriate bureaus so that an evaluation can be made as to feasibility and alternative uses to area(s) and that all planning to minimize harm to the area(s) has been provided if some use is unavoidable. These two provisos of Section 4(f) are mandatory provisions of the law that must be addressed. The Supreme Court's 1971 decision in *Citizens to Preserve Overton Park v. Volpe* (401 U.S. 402), early in the history of Section 4(f), set the standard that projects shall not go forward if the two provisions of the Act have not been met.

The Department's preliminary evaluation has identified several areas or properties that are protected by Section 4(f) affected by the project. Included are Badlands National Park and Wind Cave National Park. While it is true that the project would not require land from either of these units of the National Park System, both parks would suffer from constructive use of resources. As stated by 23 CFR § 711.135(p)(4)(ii), constructive use occurs when, "The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource."¹ Constructive use of the two parks would occur because of degradation to their class I airsheds due to locomotive emissions (impacts discussed below). Expansive and clear vistas are an integral component of the resources and visitor experiences at these parks. Backcountry recreationists at Badlands also would be impacted from audible intrusions on the wilderness experience from train whistles.

Section 4(f) resources affected by the proposal include Minneopa State Park, Sakatah Singing Hills State Trail, Farmer's Community Park, Chester Woods County Park, Goose Lake County Park, Williams County Park, Red Jacket Trail, Minnesota River Trail, Sibley Park, Rochester Downtown Rivers Trail, and Cascade Creek Trail. The impacts to archeological/historic sites that are on or eligible for the National Register of Historic Places also must be evaluated in the context of Section 4(f).

¹ We understand that this is a Federal Highway Administration regulation that does not apply directly to this project. However, the interpretation of constructive use establishes an important precedent and interpretation of Section 4(f) that is germane to the Powder River Basin Expansion project.

ENVIRONMENTAL IMPACT STATEMENT COMMENTS

1. Determination of environmentally preferable alternative

In section ES.8.1 (Pages ES-22 through ES-24), the DEIS provides a discussion of the no-action alternative, indicating that the STB's Section of Environmental Analysis (SEA) preliminarily concludes that the no action alternative has its own potentially significant environmental impacts. According to DM&E, it cannot afford to rehabilitate its existing track absent the financial resources that could be gained through construction of the new rail line. Without substantial rehabilitation, service and safety on the existing system will suffer and the rail line may become non-viable. Thus, the "SEA determined that the no-action alternative would pose safety impacts, both rail and highway, and economic impacts to rail shippers along the existing rail line as well as potentially to the regional agricultural economy." The SEA requests further comments to aid it in determining if the no-action alternative would be the environmentally preferable alternative in the FEIS.

We believe that the SEA has misconstrued the meaning of the term "environmentally preferable alternative" in section ES.8.1 and throughout the FEIS. The guidance provided by the Council on Environmental Quality (CEQ) in the Forty Questions and Answers about the National Environmental Policy Act (NEPA) regulations, dated March 17, 1981, indicates that "the environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources." It does not necessarily mean that the environmentally preferable alternative will ultimately be the action agency's preferred alternative. While safety and economic viability are very important factors to be considered in the STB's decision regarding the proposed project, they are not the factors that should be considered by the SEA in determining the environmentally preferable alternative. In light of the guidance set forth above and the substantial adverse environmental impacts associated with all the action alternatives, there can be no question that the no-action alternative is the environmentally preferable alternative. We recommend that all parts of the EIS dealing with the subject of environmentally preferable alternative be revised to reflect the CEQ guidance and that a very clear distinction be maintained between the "environmentally preferable alternative" and what may be the SEA's "preferred alternative."

2. Impacts to units of the National Park System

Under its Organic Act of 1916, the NPS is directed by Congress "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, as a Federal land manager (FLM), the NPS has an "affirmative responsibility" under the Clean Air Act Amendments of 1977, in order to protect class I areas from adverse air pollution impacts. The Department is concerned about potential adverse impacts on NPS class I areas in the region, for which the NPS has a Federal mandate and responsibility to conserve and protect.

Under the preferred alternative C, the railroad expansion would approach within 16 kilometers (km) north-northwest of Badlands National Park (Badlands) and within 30 km to the east of Wind Cave National Park (Wind Cave). Both parks are mandatory Federal class I areas administered by the NPS. Mandatory Federal class I areas are defined by Congress in the Clean Air Act Amendments of 1977; they receive special

protection from air pollution impacts. Mount Rushmore National Memorial (Mount Rushmore), Jewel Cave National Monument (Jewel Cave), and Devil's Tower National Monument (Devil's Tower) are class II areas administered by NPS that would also be in proximity to the expanded rail system.

Badlands operates the only IMPROVE (Interagency Monitoring of Protected Visual Environments) site in the region that has any significant historical data. Page 3-59 of appendix L ranks Badlands as having only average visibility; this is misleading and not relevant to a discussion of class I airshed values. The annual average of the 20 percent cleanest days recorded at Badlands over the past ten years ranges from a maximum of 23.49 Mm^{-1} to a minimum of 19.66 Mm^{-1} with an average of 21.55 Mm^{-1} . As cited in FLAG (Federal Land managers Air quality related values working Group), the estimated natural background value for Badlands is 16.1 Mm^{-1} . Extinction values across the United States range from 20 Mm^{-1} at Denali National Park and Preserve (Alaska) to 140 Mm^{-1} at Mammoth Cave National Park (Kentucky), so it is inappropriate to characterize visibility at Badlands as "average."

Biases of, and uncertainties associated with, air quality analysis methods

The NPS informs us that during the latter part of 1999, representatives from STB, NPS, United States Environmental Protection Agency (EPA), and the DM&E met to develop a modeling protocol that set out the parameters by which air quality impacts from the DM&E and other projects in the area would be estimated. While we believe that the modeling has been conducted in accordance with the protocol, it is important to realize the inherent uncertainties and biases in the modeling approach. There are several reasons why the model might underestimate impacts:

- Locomotive emissions are assumed to be evenly distributed both spatially and temporally. This could underestimate puffs from individual locomotives by averaging their emissions over space and time, with the result being fewer high impacts but a higher minimum impact.
- Locomotive emissions were assumed to be regulated by EPA and to meet tier 0 or tier 1 emissions standards. In fact, because EPA considers DM&E a "small business," it will not be regulated and therefore not subject to the EPA locomotive emission standards. If we assume that these unregulated locomotives emit at the average baseline rate assumed by EPA in its rulemaking on locomotives, nitrogen oxides (NO_x) emissions would be 34 percent higher than modeled for tier 0, and 49 percent higher than modeled for tier 1. Thus, the 50/50 mix of tier 0/1 locomotives modeled by STB underestimates NO_x emissions by about 42 percent.
- The annual mean of the 20 percent cleanest days used in the DM&E study for Badlands was 24.72 inverse megameters (Mm^{-1}). (This compares to a cleaner natural background value of 16.1 Mm^{-1} at Badlands from FLAG.) The visibility model used is based upon a background extinction value that is higher than any annual average of the 20 percent cleanest days recorded at Badlands over the past ten years (max. 23.49 Mm^{-1} ; avg. 21.55 Mm^{-1}). This would tend to underestimate the impacts of new sources because they would be lost in the haze input into the model.
- Emissions from the proposed South Dakota Cement plant and PRB Oil & Gas project were not included in the DM&E study.
- Fugitive emissions (if any) of coal dust blowing from moving trains were not included in the study. Dust blowing from moving coal trains has been found to be a significant problem in southwestern Virginia and western Canada.

A major issue affecting the accuracy of the model is the assumed value for background concentrations of ammonia. Ammonia reacts with NO_x to form particulates that impair visibility. Standard assumptions for background ammonia range from 0.5 parts per billion (ppb) for forestlands to 1.0 ppb for arid lands to 10 ppb for grasslands. In the absence of actual background monitoring data for ammonia in the region, it was agreed to assume a 5-ppb ammonia background concentration. Monitoring of actual ambient concentrations of ammonia would be needed to reduce uncertainty associated with this issue.

A second major issue is the speciation of the particulate matter (PM) emissions from diesel locomotives. The nature of the PM emissions has a significant influence on how the model predicts visibility impairment. PM emissions are split 20.9 percent organic carbon, 54.8 percent elemental carbon, 4.9 percent sulfate (SO_4), and 19.4 percent fine particulate ($\text{PM}_{2.5}$). According to an April 19, 2000, report from Environ, while the speciation data are from the EPA SPECIATE database, the actual sources of these data are unknown. Environ's review of available literature concluded that there was no better speciation data available, and its use was agreed upon by NPS. Testing of locomotive emissions would be needed to reduce uncertainty associated with this issue.

The statement (page 3-59 of Appendix L in the DEIS) that the new EPA locomotive emissions standards will reduce emissions is misleading in that it implies that those reductions will occur in the near future. It is also misleading because these standards do not apply to DM&E because it is considered a "small business" (i.e., less than 1500 employees). Even if DM&E were subject to the EPA standards, existing locomotives do not have to meet the new standards until they are rebuilt, usually every 4 to 5 years, and even then they would never have to meet the tighter tier 1 or tier 2 standards that only apply to locomotives originally manufactured after 2001, and 2004, respectively.

The EPA CALPUFF model (version 5) was used to estimate the impacts on air quality and air quality related values of new pollutant emissions from locomotives that would operate on the proposed new PRB expansion project/DM&E railway. Under all alternatives, the project's modeled contributions to sulfur and total nitrogen deposition are below an amount that would be expected to contribute substantially to deposition within Badlands and Wind Cave National Parks.

The NPS determines adverse impact to visibility based on the frequency, magnitude, and duration of the impacts on a case-by-case basis. A 5 percent change in existing background extinction is a significant impact threshold, and a 10 percent change in extinction constitutes a likely adverse impact in a NPS class I area. The modeling results indicate that, except at Devil's Tower, the route C project alternative has lower visibility impacts than the other alternatives at all levels of coal transport. Under the route C at 100 MNT alternative, nine days per year exceed the NPS significant level of 5 percent change in extinction at Badlands. At Wind Cave, three days exceed 5 percent, one day of which has extinction greater than 10 percent. Also under this scenario, three days at Mount Rushmore exceed 5 percent, four days at Jewel Cave exceed 5 percent, and four days at Devil's Tower exceed 5 percent. At Devils Tower one of those four days exceeds 10 percent change in extinction. Under the route C at 50 MNT alternative, one day at Wind Cave and one day at Devil's Tower exceeds 5 percent change in extinction. No exceedances are indicated at any parks under the route C at 20 MNT alternative.

Based upon a careful review of all proposed project alternatives, the NPS has determined the alternative C at or above 40 MNT may result in potential adverse impacts on NPS class I area(s). Based on the shortcomings previously stated in these comments, it is their interpretation that the modeling result--which already indicate

numerous visibility impacts--substantially underestimate the frequency and magnitude of impacts. The visibility model predicts changes in extinction averaged over 24 hours as opposed to the short-term experience of a visitor. It is therefore likely that a park visitor would experience greater short-term changes in extinction than predicted by the 24-hour model. Because only one year of meteorological data was modeled (1990), it is likely that modeling of other years would predict impacts that are greater some years and lesser some years. For all practical purposes, there is little difference in visibility impacts between tier 0 and tier 1 locomotives, but a major reduction in impacts at tier 2. This may be due to the influence of PM (especially elemental carbon) on the visibility model and the fact that PM emissions are not reduced until tier 2 standards are met.

Cumulative visibility analysis

The Department considers potential impacts from individual projects as well as the results of the cumulative visibility analysis. The DEIS analyzes the visibility impacts that are due to: (1) newly permitted and reasonably foreseeable developed sources since 1996; (2) the DM&E Project alternatives; and (3) the cumulative impacts resulting from (1) and (2). The cumulative visibility analysis indicates significant adverse impacts at both Badlands and Wind Cave. These impacts occur for all project alternatives and all MNT options presented in the DEIS. The DEIS estimates 13 to 33 days (depending upon which project alternative scenario is selected) in which the 10 percent change in extinction threshold would be exceeded at Badlands. At Wind Cave, there is a range of 25 to 34 days in which this threshold could be exceeded. Numerous impacts are also expected at Mount Rushmore, Jewel Cave, and Devil's Tower under all alternatives.

The Department recognizes that the contributions of the proposed DM&E Project constitute a relatively low percentage of the projected cumulative impact. The NPS informs us that it has previously submitted comments regarding the Wyodak CBM Project. The DEIS refers to and utilizes these comments out of context to interpret the DM&E project modeling results (Chapter 6, page 16, and Chapter 7, page 2). The NPS determined that the impacts from the Wyodak project alone were not adverse. The NPS advises that it has not made the same determination for the DM&E Project DEIS, in which several alternatives alone are predicted to create potentially adverse impacts. While the DM&E Project and Wyodak visibility impacts are similar, it would not be accurate to directly compare these two different projects to reach conclusions regarding any adverse impacts of the DM&E Project. It is important to note that the Wyodak letter also conveyed strong concerns over the cumulative impact analysis conducted as part of the Wyodak review, and requested that action be taken to reduce impacts on visibility at Badlands and Wind Cave. We are not aware of any such mitigation actions to date; instead, impacts continue to accumulate. For that reason, the NPS informs us that it believes it must act to further reduce visibility impacts upon these Federal areas for which it is responsible.

Other NPS-related comments

A notable weakness of the DEIS is that it does not identify the national parks units when it discusses impacts to Federal lands. Twenty-nine agencies and entities were identified in the executive summary as being consulted on this project, but the NPS was not one of them.

Throughout the DEIS, reference is made to "Sage Creek Wilderness Area in Badlands National Park." The proper legal name is the Badlands Wilderness Area in Badlands National Park.

The DEIS fails to address impacts to wilderness values, particularly noise, on the wilderness visitor experience. If the preferred alternative were implemented, trains would pass within 4-8 miles of the Badlands Wilderness Area. Under alternative B, the track would be within 3,700 feet of Badlands National Park. Page 4.4-147

states, "Operating a railroad in close proximity to the park would have an adverse impact on these qualities [wilderness character, quiet, solitude] in those portions of the park where they would be noticeable [sic]." The narrative continues, referring to alternative C, "No parks, wild and scenic rivers, or natural landmarks would be affected by this alternative." There is no evidence to support this claim. Alternatives B and C are only separated where B goes to the northeast corner of the South Unit of Badlands. Alternatives B and C are in essentially the same alignment as they pass by the Badlands Wilderness Area. Therefore, both routes need to be examined for their impacts to wilderness values. As the largest of only three designated wilderness areas in the State of South Dakota, Badlands Wilderness Area deserves more consideration in the DEIS.

The DEIS does not address the problem of invasive plants adequately. In particular, it does not discuss the potential of new non-native weed seeds being transported by the railroad along the Cheyenne River and moving up watersheds. Sage Creek, within Badlands National Park, could be an avenue for non-native weed dispersion from the railroad into the Badlands Wilderness Area. Of major concern is the risk of spreading tamarisk (*Tamarisk ramosissima*) from the more heavily infested areas west of the park to the new alignment proposed in alternatives B and C. Tamarisk does not currently occur in the park and this project would likely create a new invasion. The document appears to be silent on the potential impacts of tamarisk.

It should be noted that archaeological and paleontological impacts associated with the extension alternatives would likely diminish the integrity of the Badland's archaeological and paleontological resources because the context of both types of resources extends beyond the park boundary. For example, archaeological sites within the park are likely to be associated with sites of similar date outside the park, particularly along the Cheyenne River. Consequently, the loss of archaeological resources along the Cheyenne River in alternatives B and C would result in the loss of information that may be crucial to the understanding of the park's human history. A similar relationship exists for paleontological resources where the loss of associated fossil resources outside the park would result in the loss of information that may be crucial to the understanding of the park's paleontological resources.

Page ES-38--This section states that alternative D would have "greater noise, air emissions, and impacts to visibility at Badlands National Park, Black Elk Wilderness Area, and Wind Cave National Park" as class I airsheds or "areas of important visual quality." There appears to be no explanation of how that route, much further from the Badlands than alternatives B or C, would have a greater impact.

Page 4.4-59--The DEIS addresses noise from construction and operation activities associated with the new construction. In this analysis, noise levels above 70 dBA are considered to be "significantly adverse." A 1999 study found that the mean natural background noise at Badlands National Park is 35.2 dBA. NPS management policies require the protection of natural soundscapes from degradation due to undesirable human-caused sound. Consequently, it would be more appropriate to compare noise impacts of each alternative with the natural background noise of 35.2 dBA. The tables in appendix F, Noise Analysis, only show the existing route from Wasta east. The tables do not address noise considerations on the new construction for any of the alternative routes.

Appendix L, table 4-14--The narrative indicates that alternative B could have an impact on the prairie dog colonies that comprise the Conata Basin/Badlands black-footed ferret reintroduction area. Because Badlands National Park is a major partner in this recovery effort, impacts to prairie dogs or ferrets should be considered an impact on the park's wildlife resources.

Appendix L, page 4-11--This page states that the alternatives would not impact designated wilderness or wilderness study areas. The basis for this statement appears to be that the alignments proposed in alternative B & C are six miles north of the Badlands Wilderness Area. We disagree with this conclusion. Air quality will be affected by both alternatives and six miles is not enough distance to protect the Badland's air resources from the resulting degradation. As visual resources are a primary wilderness value, the deterioration in air quality and resultant changes in visibility constitute an impact on the largest wilderness area in South Dakota.

3. Environmental impacts to the Angostura Irrigation District and the USBR Angostura Unit

The United States Bureau of Reclamation (USBR) is a cooperating agency for the DEIS, although the Bureau has informed the Department that it was not provided an opportunity to participate in the development of alternatives. The USBR has advised us that it would prefer that a crossing of the Angostura Irrigation District (District), an integral part of its Angostura Unit, be avoided. The "WG Divide option" would result in substantial impacts to the District. In November 1999, the District passed a resolution opposing any rail alignment crossing District lands.

The USBR's primary concern is the ability of the District to pay for the costs of constructing, operating, and maintaining the Angostura Unit. As a unit of the Pick-Sloan Missouri Program authorized by the Flood Control Act of 1944, Angostura provides water for the irrigation of more than 12,000 acres. Unit irrigators must pay for nearly \$3 million of the \$14 million in Federal costs allocated to irrigation. power revenues; Pick-Sloan hydroelectric facilities will pay the remainder.

Of all the alternatives evaluated in the DEIS, alternative C, using the WG Divide option, would have the greatest impact on the District. The USBR estimates that this alternative would isolate 452 irrigated acres due to new construction, remove 266 acres of irrigated land to establish right of way for rail facilities, and reduce the size of fields on another 169 acres. The total acreage involved is approximately 887 acres, or about 7 percent of the 12,218 acres in the District. Approximately 11 landowners would be directly affected. If the entire 887 acres become uneconomical to operate, the net loss would be about \$159,000 annually in crop value. In addition, by bisecting the District, the WG Divide alternative will likely increase the costs of operating, maintaining, and replacing project canals, laterals, drains, and other essential facilities, especially where new crossings result in new structures and increased access time. Reduced income and increased costs will impact the District's ability to operate and maintain the project, and to meet its repayment obligations to the United States.

The analysis of economic impacts in the DEIS does not carefully examine the adverse effects which would result to the District from the proposed action and alternatives. The DEIS appears to discount such adverse economic effects as insignificant, while emphasizing regional economic benefits associated with the construction and operation of new rail facilities. Net positive economic effects are asserted without supporting analysis and therefore appear to be anecdotal. The economic analysis should be expanded to more clearly identify and substantiate the areas of potential gain and loss from building and operating the project. The FEIS should evaluate such impacts on local economies, including the District.

4. Environmental Impacts associated with transportation of coal and other commodities from the project terminus at Winona, Minnesota, to intended customers

Chapter 5 of the DEIS provides some discussion of cumulative impacts. Brief descriptions are provided of past, present, and reasonably foreseeable local projects and activities within the PRB expansion project area that could result in cumulative impacts when combined with the environmental impacts of the proposed expansion and reconstruction of the DM&E system. However, the DEIS fails to provide any description or discussion of environmental impacts associated with transportation of increased rail freight reaching Winona, Minnesota. As stated in the DEIS, the project proposes to allow DM&E to safely and efficiently transport existing rail cargo and up to 100 million tons of coal annually in unit coal trains from Wyoming to Winona, Minnesota. This may result in an increase of up to 34 unit coal trains per day in addition to the current average of only 3 trains per day hauling non-coal commodities. Footnote #6 on the bottom of page I-5 (Vol. I) of the DEIS provides some information on the midwestern utilities that are the target markets for delivery of PRB coal by the DM&E. The FEIS should provide detailed information on the transportation modes likely to be used to transport coal from the DM&E line, particularly from the Winona terminus, to these intended customers; whether the anticipated increase in use on each of these transportation links will constitute a substantial increase in use; and what the environmental impacts will be associated with increased use on these transportation links.

The DEIS indicates that the use of the lower sulfur PRB coal in place of eastern coal could help reduce sulfur dioxide emissions. As coal-fired power plants are considered to be the primary source of mercury emissions, the FEIS should also discuss the possible changes, if any, in mercury emissions that would be associated with utilities switching from eastern coal to PRB coal.

The Upper Mississippi River (UMR) is designated as a nationally significant ecosystem in the Water Resources Development Act of 1986. As referenced on Page 3.1-18 of the DEIS, the USFWS's Upper Mississippi River National Wildlife and Fish Refuge extends downstream from Wabasha, Minnesota, approximately 261 miles to Rock Island, Illinois. The Refuge is approximately 233,000 acres in size and provides valuable floodplain habitat for a variety of migratory birds, fish and other species of Federal interest. One of our major concerns with this project is that it terminates in Winona, Minnesota, adjacent to the UMR and Refuge. While we understand that some Wyoming coal will be transported to customers before reaching Winona, it is logical to predict that a large quantity of Wyoming coal transported on the proposed DM&E line may be off loaded at Winona, and transported downstream by commercial barge navigation sometime in the future, thus significantly increasing commercial barge transportation on the UMR. This is particularly true considering the fact that there are a number of utilities located on the UMR, the Illinois River, and the Ohio River that can be reached by barge from Winona, and that the DEIS has indicated a desire by the DM&E to supply coal to Eastern utilities in addition to Midwestern ones. Page 3.1-88 provides a brief discussion on existing barge transportation on the UMR at the Winona Harbor. On that page, the DEIS states that "DM&E has no direct rail access to the barge loading facility in Winona. However, they interchange traffic with UP to deliver and receive goods transported by barge." In our opinion, once the DM&E project is completed, it is logical to anticipate that direct rail access will be proposed by barge interests in the Winona area for transport on the UMR.

Currently, the Corps is involved in a multi-year and multi-million dollar Upper Mississippi and Illinois Rivers System Navigation Study to assess environmental impacts and economic benefits from a variety of upgrades to the existing barge transportation infrastructure. A primary objective of these studies is to assess environmental impacts associated with an increase in barge transportation on the Upper Mississippi River System (UMRS) due to these system improvements. To date, the study has not considered the DM&E project and, specifically, the increase in barge transportation the project may induce.

USFWS personnel have participated in several meetings with the DM&E personnel and consultants, who have stated verbally that the proposed DM&E project will not affect commercial barge transportation on the UMRS. However, unless adequate assurances are provided by the STB that this project will not result in the expansion of commercial navigation on the UMRS, it is our opinion that the DEIS is not adequate and must be expanded in scope to include environmental impacts and mitigation measures associated with increased barge transportation of coal and other commodities on the UMRS resulting from the proposed DM&E project. If rail transport from Winona is the selected mode for the anticipated freight, the EIS should include an assessment of risk associated with accidents and spills of cargo resulting from an increase in rail transport along the UMR. Other impacts associated with increased rail transport from Winona should also be described in the EIS.

5. Environmental Impacts associated with project elements in Minnesota

Reconstruction of the existing rail line in Minnesota

The project proposes to reconstruct approximately 219 miles of existing DM&E rail line in Minnesota. While no USFWS lands or easements will be directly affected by project construction, the DEIS identifies nine State Wildlife Management Areas, three State Parks, and two State scientific and natural areas located in the vicinity of the proposed project. The USFWS will support recommendations of the Minnesota Department of Natural Resources (DNR) to avoid, minimize and compensate for project impacts to these public lands.

The USFWS will also support permit requirements of the Minnesota DNR for the protection of fish and wildlife resources during project work associated with the crossing of numerous streams, wetlands and other water bodies. Several of these crossings involve designated trout streams that have high natural resource, recreational and aesthetic values.

Minnesota Bypasses and Connections

It is somewhat difficult to assess habitat losses associated with proposed bypasses since wetland delineations were often not validated in the field. The Mankato Bypass proposes construction of a new rail line to bypass a section of rail line owned and operated by Union Pacific Railroad Company which DM&E now uses. Approximately 24 acres of wetlands may be impacted by the southern bypass route (alternative M2) and approximately 22.4 acres of wetlands for the alternative route through Mankato (alternative M3). The USFWS prefers alternative M3 which uses an existing rail corridor and has fewer habitat impacts than the preferred alternative M2.

The DEIS does not recommend a preferred alternative for the Rochester area but instead requests further comments from EIS reviewers. The USFWS prefers alternative R-2 which involves reconstruction of the existing rail line through Rochester and minimal habitat impacts. In contrast, bypass alternatives identified in the DEIS will adversely affect a variety of valuable habitat types including wetlands and hilly wooded areas. If a bypass is selected as the preferred alternative, we support the commitment made by SEA on page ES-71 for development of a bypass mitigation plan for inclusion in the FEIS. Close coordination should be maintained with the USFWS during the development of the mitigation plan in an effort to ensure that impacts are avoided to the maximum extent possible and adequate compensatory mitigation is provided to fully offset all remaining unavoidable impacts.

At Owatonna, DM&E proposes to reconstruct their existing rail line and construct a new rail line to the existing north-south I&M Rail Link. Alternative O-3 appears preferable to the recommended alternative O-5 based on fewer habitat impacts identified in the DEIS.

Minnesota Staging and Marshaling Yards

It is likewise difficult to compare habitat and other impacts for railroad yards and sidings since wetland delineations have not been completed or validated for all sites, there are many possible combinations of sites depending on selection of other project features, and locations are not always shown on maps. We recommend that any necessary staging yards avoid impacts to Minneopa State Park and other public lands. Also, we understand that there are geologic concerns with the current location for the east rail yard due to the karst topography and possibility of sinkholes in the area. The rail yard should be relocated to avoid these concerns. We are pleased to note that the former Stockton site has been eliminated from further consideration.

6. Other environmental impact statement comments

The DEIS does not address the risk of wildfire started by passing trains. Fires along the Cheyenne River would present a significant threat to public lands. Because many areas between the Cheyenne River and Badlands National Park are covered with continuous fuels, fires could migrate from the river into the park. The great number of trains passing through that area would create a continuing, significant danger of wildfire.

The DEIS also does not explain the expected duration of coal hauling from the PRB. Coal, as a non-renewable resource will be gone from the PRB at some time in the future. The DM&E must have an estimate of how long the coal will last under different extraction scenarios. The DEIS should present this information, as well as the social and economic ramifications for the communities along the route when it is no longer economically viable to haul coal.

Page 1-38, Fish and Wildlife Service--This section gives a brief description of the USFWS's role in the project area. Additional language should be included to indicate that the USFWS also manages Waterfowl Production Areas and Wetland and Grassland Easements as part of the National Wildlife Refuge System in the project area in South Dakota. The rail line will run adjacent to existing Waterfowl Production and Easement Areas. Additionally, the proposed rail yard near Huron will be constructed upon wetlands and possibly some grassland areas covered by USFWS easements. The DM&E is working with the appropriate Wetland Management District to address impacts to USFWS lands from the rail yard.

Section 4.1.4.6.3 (Land Use - Bureau of Land Management lands) -- While surface ownership is discussed specific to the BLM surface ownership, there is no discussion about situations where the BLM is responsible for sub-surface (or mineral estate) only. Because this ownership pattern does occur very frequently in the northeastern portion of Wyoming, please include some discussion about it. Also, an estimate of right-of-way (ROW) miles/acreage that traverses BLM ownership (broken down by surface and mineral) would be helpful.

Page 4.1-30, paragraph 2, sentence 2--Indicates that glacially carved wetlands in South Dakota hold water throughout the year. Most of the wetlands (90 percent) being described in this paragraph have temporary or seasonal water regimes that do not hold water throughout the year, but consistently fill nearly every year, but also tend to dry up by mid to late summer.

Page 4.1-60, Small game and furbearers, paragraph 1--Thirteen-rail lined ground squirrel should be changed to thirteen-lined ground squirrel.

Paragraph 4, sentence 1--The swift fox has been removed from the Federal candidate list.

Page 4.1-61, Reptiles, sentence 1--Rail has been inserted incorrectly in the common and scientific name of the first species.

Page 4.1-76, Endangered, threatened and special status species, paragraph 2--The black-tailed prairie dog has been added to the candidate list while swift fox have been removed from the candidate list.

Page 4.1-77, Whooping Crane, sentence 3--Most whooping cranes migrate through central South Dakota rather than western South Dakota.

Section 4.2.4.4 (Minerals and mining)--The data provided on coal (210 million tons produced in 1993) is very outdated. For example, in the year 2000, over 320 million tons were produced. Please try and use the most up-to-date figures. The Department recommends that you contact the Geological Survey of Wyoming (P.O. Box 3003; University Station; Laramie, Wyoming 82017) for the most current figures for all minerals produced. Also, there is no discussion about the extent of coal bed methane being produced in the Powder River Basin. Because the development of this resource is west of the construction of the railroad, there should not be any direct conflicts. However, the extent of this coal bed methane activity needs to be considered in the cumulative impact analysis section of the EIS. The following web site provides the most current information on coal bed methane activity: www.prb-eis.org.

Section 4.2.4.6.2 (Existing situation - Bureau of Land Management lands)--Please note that most of the coal being mined in the Powder River Basin is done under Federal coal leases.

Section 4.2.14.3 (Socioeconomics B public services and fiscal conditions)--Please add a discussion about the impact of Federal mineral royalty payments in this northeast portion of Wyoming.

Page 4.3-16, paragraph 5, sentence 3--The county wetland acreage table is 4.1-7 rather than table 4.1-12.

Page 4.3-65, paragraph 3, sentence 2-- Indicates that vegetation outside the railroad right-of-way may be impacted. There should be a description of what this impact will entail and where. Our understanding was that direct impacts outside the right-of-way would be minimal. The FWS manages waterfowl production areas and easements adjacent to the railroad right-of-way and if impacts will occur to these areas there will need to be authorization granted by the Wetland Management Districts. Additionally, the acreage of wetland in this paragraph is different than the acreage referenced in the county wetland acreage table 4.1-7.

Page 4.4-22--This page describes various alternatives and the acreage of U.S. Forest Service managed lands that will be impacted by each alternative. Will this acreage be replaced?

Page 4.4-50--This page includes the statement, "...if the visitor had not previously visited the area, they would be unfamiliar with the landscape and may not recognize that their view is impaired." This statement is pointless. The Clean Air Act requires the protection of air resources and air quality-related values, regardless of whether a person perceived an impairment or not.

Page 4.4-90--This page describes various impacts to sage grouse leks and other wildlife habitat. If the DM&E is going to offset acreage impacts to Forest Service lands, we recommend that some of the important habitats such as sage grouse leks and prairie dog colonies be considered in the replacement areas that might be given to the Forest Service for management.

Page 4.9-29, Aquatic and fisheries, sentence 1--Indicates that trout streams are present throughout South Dakota. Trout streams are very localized and not widespread in South Dakota with most being located in the Black Hills region.

Page 4.10-21, Wetlands--This section should identify the FWS easements that will be impacted by the rail yard.

Table 5.1-13, Alternative C--Does not identify any impacts to FWS easements. Our understanding is that there will be impacts to easements from the proposed rail yard near Huron, South Dakota.

Page 6-2, Topeka Shiner--The project proponents submitted a list of best management practices to Corps that will be undertaken when construction will occur near Topeka Shiner streams or possible tributaries to these streams. We recommend these best management practices and others that may be developed before the FEIS is completed to be listed in the FEIS as environmental commitments.

Section 7.8.3.4 (SEA's Proposed Environmental Mitigation B Minerals and Mining)-- Item number 43 is confusing. A BLM permit will be required to mine mineral materials needed for road construction when the BLM has surface and/or mineral ownership of the specific land parcel. However, no permits are needed regarding oil and gas lessees. A good faith effort should be made to notify all mineral lessees/claimants where the BLM has mineral ownership. The public notices in local newspapers and the *Federal Register* notice of intent meet the legal obligations of notification, but additional effort, such as the wording used in item number 49 dealing with utility owners but changed to reflect mineral lessees/claimants, would also help in reducing potential conflicts.

Page 7-20, Water resources--This section should acknowledge the important wildlife habitat provided by isolated wetlands, including those wetlands that may not require the Corps permit for impacts. These isolated wetlands are extremely important waterbird and wildlife habitat areas and the Fish and Wildlife Service recommends these wetlands be replaced if the project may impact them. Commitments to accomplish the replacement of these habitats are important.

Appendix F--The appendix discusses impacts to stationary noise receptors such as churches, schools and residences. It does not address non-stationary receptors such as visitors to national parks or other recreation areas. Noise impacts on wilderness users from trains passing by the Badlands Wilderness Area are not addressed.

Appendix L, page 3-59--The text describes air quality monitoring in the area, but overlooks the NADP site at Cottonwood, South Dakota, and the transmissometer at Badlands National Park.

ENDANGERED SPECIES ACT COMMENTS

The USFWS concurs with the determination in the DEIS that the proposed project is not likely to adversely affect the federally threatened bald eagle (*Haliaeetus leucocephalus*), endangered Higgins' eye pearlymussel (*Lampsilis higginsii*), endangered winged mapleleaf mussel (*Quadrula fragosa*), endangered Karner blue butterfly (*Lycia melissa samuelis*), endangered Minnesota dwarf trout lily (*Erythronium propullans*), threatened Leedy's roseroot (*Sedum integrifolium* ssp. *leedyi*), threatened prairie bush clover (*Lespedeza leptostachya*), and threatened western prairie fringed orchid (*Platanthera praeclara*). The USFWS also concurs that the project is not likely to adversely affect the endangered Topeka shiner (*Notropis topeka*) provided that best management practices identified in the DEIS and additional measures identified in the October 23, 2000, letter from Mr. Kevin V. Schieffer, President and CEO of DM&E, to Mr. Scott Larson, USFWS, are implemented.

We note that the DEIS identifies State listed threatened and endangered species but provides no impact assessment or mitigation measures. We recommend that the DM&E and the SEA consult with the Minnesota Department of Natural Resources concerning potential impacts to State listed species. The FEIS should provide an assessment of State listed species; and measure should be taken to avoid, minimize or compensate for project impacts.

FISH AND WILDLIFE COORDINATION ACT COMMENTS

The DEIS indicates that Federal permits - under Section 404 of the Clean Water Act for the crossing of streams, wetlands, or other waters, and under section 10 of the Rivers and Harbors Act for construction activities in navigable waterways - will be needed from the Corps for the build alternative. Accordingly, the Department's comments do not preclude separate evaluation and comments by the USFWS when reviewing any forthcoming permit applications. The USFWS may concur, with or without stipulations, or may recommend denial depending upon effects. However, the USFWS advises that it would likely not object to the issuance of any necessary permits for the projects if the issues discussed above are adequately addressed, if impacts to aquatic habitats are avoided or minimized to the maximum extent practicable, and if adequate compensatory mitigation is provided to offset unavoidable impacts.

Habitat impacts in Minnesota and need for implementation of a habitat restoration plan

A variety of wetland and upland habitats will be impacted in Minnesota, as a result of the proposed project. Approximately 240 acres of wetland habitat will be impacted for rail line reconstruction, as identified in public notice 98-5541-TJF, dated September 29, 2000, for the required Corps section 404 Permit. This acreage figure is different than the estimate of 187 acres in the DEIS and was revised in the Corps' public notice based on additional information and field review of previous wetland delineations. In addition, the project may also result in the loss of approximately 34.1 miles (412 acres) of native prairie habitat, and an unspecified amount of woodlands depending on final selection of alternatives. Most of the habitat losses will occur within the existing DM&E right-of-way. However, additional habitat losses will occur at specific locations where new rail line, bypasses, or yards are proposed.

These habitats are valuable to a variety of wildlife including waterfowl, songbirds, raptors and game species such as white-tailed deer, ring-necked pheasants and turkeys. We support the intent of DM&E to restore habitats in the right-of-way after construction to offset a portion of these habitat losses. We also recommend

that any net loss of wetland/prairie/woodland habitat resulting from the proposed project be replaced through development and implementation of a habitat restoration plan. The plan should be developed in coordination with DM&E, SEA, Minnesota DNR, Minnesota Board of Water and Soil Resources, Corps and USFWS. The plan should include measures to avoid and minimize habitat losses associated with the project, and measures to fully compensate for unavoidable impacts. The plan should also include adequate operation and maintenance funds to ensure that replacement habitats remain viable in perpetuity. We recommend that the SEA require DM&E to develop and implement such an overall habitat restoration plan. Details on the habitat restoration plan should be included in the FEIS.

With respect to wetland impacts, the USFWS will recommend to the Corps that the Section 404 permit be conditioned to require a wetland mitigation plan be developed by DM&E and submitted to the Corps, Minnesota DNR, Minnesota Board of Water and Soil Resources and the USFWS for approval. Once approved, the plan shall be implemented by the DM&E prior to or concurrent with the start of any construction activities in Minnesota associated with the proposed project.

The State of Minnesota's Wetland Conservation Act will likely require 2:1 replacement of wetland losses. Given a hypothetical wetland loss of 240 acres, approximately 480 acres of replacement wetlands would be necessary. Existing wetlands cannot be used for replacement; the preferred method of replacement is restoration of former wetlands. We strongly suggest that the SEA require a wetland mitigation plan which accomplishes the wetland replacement goals and objectives of both the State of Minnesota's Wetland Conservation Act and Section 404 of the Clean Water Act. Mitigation measures and information in the DEIS can be used as a starting point for agency discussions. As stated previously, we would prefer that this plan be part of the overall habitat restoration plan, recommended above, which would include replacement of all wetlands, prairies and woodlands unavoidably impacted by the project.

SUMMARY COMMENTS

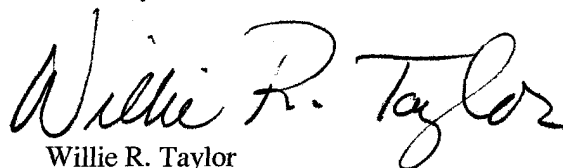
The DEIS is deficient in several respects, including the misconstruing of the meaning of the term "environmentally preferable alternative" and the lack of any analysis of the environmental impacts associated with transportation of coal and other commodities from the project terminus at Winona, Minnesota, to DM&E's intended customers. These deficiencies should be corrected in the FEIS.

The Section 4(f) evaluation comments in this letter are provided to give you an early indication of our thoughts about the section 4(f) information and involvements. They do not represent the results of formal consultation by the Department of Transportation with the Department of the Interior, pursuant to the consultative requirements of Section 4(f). Such requirements would be fulfilled only when the Office of the Secretary of this Department comments separately on any Section 4(f) evaluation prepared and approved by you for circulation. We recommend that the FEIS not be completed and released until the Section 4(f) consultation is completed.

The Department has a continuing interest in working with the SEA in order to ensure that project impacts to resources of concern to the Department are adequately addressed. We encourage you to continue to coordinate and consult with staff from all bureaus of the Department that the SEA staff and the DM&E already have been working with regarding the proposed project.

We appreciate the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Willie R. Taylor". The signature is written in a cursive style with a large, prominent "W" and "T".

Willie R. Taylor
Director, Office of the Environmental
Policy and Compliance