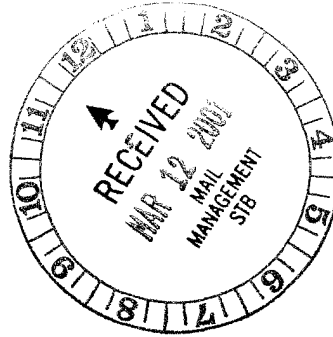


March 5, 2001
PO Box 140
Manderson, SD 57756

201763

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



ENTERED
Office of the Secretary
MAR 12 2001
Part of
Public Record

Attention: Victoria Rutson
Environmental Project Manager
Environmental Filing

Re: Continuation of Comments on Powder River Basin Expansion Project Draft
Environmental Impact Statement

Dear Ms. Rutson:

As stated at the Nov. 2, 2000, public meeting in Rapid City, SD, I reserved the right to submit additional comments on the PRB Expansion Project without violating any provisions of the Fort Laramie Treaties of 1851 and 1868 and my status as a member of the Tetuwan Oceti Sakowin, Oglala Lakota band. The following are my additional comments.

1. The question of legal land ownership must be addressed first before any decisions can be made by any federal agency on this project. The information as stated in the last paragraph of Section 4.1.4.7 Reservation and Treaty Lands states that the Treaty of 1851 was never rescinded, and that "Today those Treaty lands, including the counties of Haakon, Stanley, Jackson, Pennington, Custer and Fall River, are disputed by several Tribes as still being the property of the Sioux nation."

The Fort Laramie Treaty of 1868 likewise was never rescinded and should never have been touched based on the Indian Appropriations Act of March 3, 1871. "The legislation expressly provides that treaties ratified prior to the date of the cut-off would have continuing validity." (Leventhal, Larry; "Indian Treaties are the Law of the Land," American Friends Service Committee, Minneapolis, MN, 1977; p. 1)

Additionally, Section 4.2.4.7 states: "However, Indian trust assets associated with the 1868 Fort Laramie Treaty are included in the project domain." The exact wording of the Fort Laramie Treaty of 1868 concerning the land area in Wyoming specifically states in Article 16: "The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux Nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in the Territory of Montana shall be closed." Copies of the Treaties were previously submitted on Nov. 2.

These "Indian trust assets" include all the land area of northeastern Wyoming through which the DM&E plans to build, as well as the Thunder Basin National Grasslands and the present day coal fields which are all illegally occupied.

Had these areas in western South Dakota and northeastern Wyoming been the property of private American citizens, would the STB and the other federal agencies

been allowed to make any kind of determinations for a private business venture entering private property without legal land ownership being determined? As the question is raised by Native American people, should a determination by the STB and the other federal agencies be any different?

The question of legal land ownership as raised by Native American individuals and tribes should hold even more validity as the question of an international treaty is involved. As the question of legal land ownership is being raised by Native American people, and appears to be ignored, this lack of response to the question could also be construed as an example of institutional racism. Whatever the reason for not answering the question of legal land ownership, that reason must be stated for the Lakota (Sioux) people and the non-Indian people currently in the area.

As an international treaty is involved, the actual determination of land ownership cannot be made by a federal agency. That determination can only be made at an international level. However, such agencies have an obligation and duty not to participate in any illegal activity, or any activity that violates the Constitution of the United States which states in Article VI that "...treaties are the supreme law of the land."

2. "Paleontological resources are extensive in western South Dakota," as stated in Section 4.1.3.5 and must be protected. These resources are unmitigable so their destruction would be final and a loss to future generations as well as the field of knowledge. The construction of a railroad track would destroy many valuable and irreplaceable resources. The DM&E Railroad must not be allowed to build on any paleontological area.

3. In response to Section 4.1.13 Cultural Resources, all of the archeological sites along the route proposed by the DM&E railroad through the southern Black Hills have been mapped, according to Pat Hoefer from the South Dakota Archeological Research Center in Rapid City in a telephone conversation I had with her in August, 2000. However, the local ranchers dispute this statement. Many have repeatedly said in public meetings that they have refused to have their ranches surveyed for archeological resources. The question of how many ranches were actually surveyed, how extensively, and what were the conclusions of the tribal monitors must be answered.

Hoefer also stated that the final written narrative portion of the report is being completed by Professor Bill Rainey at the Archeology Lab, University of South Dakota, Vermillion, SD. Professor Rainey stated that the final archeological report will be completed next Spring, 2001. How can the public make comments on a study that is not being released until Spring, 2001?

Professor Rainey stated he is not contacting any Native American elders about the sites on the map. Clair Green from Burns and McDonald is the liaison for the tribal monitors, and is to coordinate the tribal monitors report for inclusion in his (Rainey's) report. The tribal representatives that he is aware of are Tim Mentz from the Standing Rock Reservation, Bronco LeBeau from the Cheyenne River Reservation, and Elaine Quiver, Pine Ridge Reservation. The consultation of only three tribal members excludes the knowledge of many other elders.

The validity of the inclusiveness of the information for this section on Cultural Resources of the DEIS is brought to question without more total input from many Lakota, Dakota, Nakota, Cheyenne, Arapaho, and other tribal members. The archeological survey, narrative, and consultation with the above named Tribes needs to be completed prior to any release of a final archeological study. Such a survey, narrative, and consultation should be bilingual for the Tribe involved, i.e. written in the Lakota language, having the availability of Lakota translators, or written in the Cheyenne language with the availability of Cheyenne translators depending on the Tribe one is working with.

Furthermore, many sites with religious significance to Tribal people, known as Traditional Cultural Property, are located within the path of the proposed route. However, Tribal people are very reluctant to have such places publicized or put on maps due to the exploitation of such sites by insensitive persons when their locations are known. How will such places be identified and protected?

"In 1946 archaeologists of the Missouri Basin Project (River Basin Surveys, Smithsonian Institution) came to the upper Cheyenne River where it coursed along the southern edge of the Black Hills. The impending construction of Angostura Reservoir there threatened untold archaeological sites, and federal funding was used to underwrite a systematic survey of the land that would be flooded. Among the sites discovered was the Ray Long site (39FA65). First work was begun there in 1948, and the excavators found a great deal of evidence for early human occupation along a terrace of the Cheyenne River. Buried beneath five to seven feet of soil was one that contained a number of hearths, along with camp related tools (scrapers, knives, perforators). Those types of artifacts tell us the function of such a site, but since the same styles of domestic tools can be found in many cultures covering at least ten thousand years, they do little to pin down a site in time or to give any distinctiveness to it." (Prehistoric Hunters of the Black Hills, E. Steve Cassells, Johnson Publishing Company, Boulder, CO, 1986. P.38)

Lakota origin stories state that we came out of Mother Earth at Wind Cave in the Black Hills. Our star knowledge, or Lakota astronomy place us mathematically in the Black Hills 7,000 years ago. Our lineage can be traced to these archeological sites. This leads to the speculation that there are probably numerous other sites along the Cheyenne River to the Missouri River that are from five to seven feet beneath the soil. This speculation would also include sites along the Bad River near which the DM&E currently operates.

In the southern Hills, are located a number of sites of prehistoric recordings either painted or carved into the rock. These areas are located in the major Hogback canyons which circle the Black Hills, and the Cheyenne River flood plain.

"It was not until 1980, however, that the greatest contribution was made to our knowledge of Black Hills rock art. An intensive survey of the southern Hills was undertaken by Project Director Linea Sundstrom of the Archaeology Laboratory, South Dakota State University, bringing the total of known and recorded southern Black Hills rock art sites to 69." (Prehistoric Hunters of the Black Hills, Cassells. P.79-80)

"Ignorance and in some cases malice have resulted in rock art defaced by carved initials, bullet holes, and worse forms of vandalism. How long can this precious resource survive the hand of modern humans?" (Prehistoric Hunters of the Black Hills, Cassells. P.84)

Unfortunately, the DM&E has a history of destroying archeological excavation areas, such as the Price Site in Minnesota. ("Desecration of a Native American Site: The Loss of the Price Site", Michael Scullin, Professor Anthropology, Minnesota State University, Mankato, Sept. 1999) An all encompassing archeological research study needs to be completed on every foot of the land that is projected to be covered in the construction of the DM&E railroad expansion.

4. Section 4.1.13 Cultural Resources, page 4.1-96 states: "Cultural resources, both historic and archaeological, are found throughout the project area and have the potential to be impacted by the proposed project. Presently, historic sites along the southern portion of the Cheyenne River are only now beginning to emerge with information surfacing of massacres along the River that were not documented and consequently publicized previously.

Just ten years ago, on Sept. 25, 1990, testimonies were given to the Senate Select Committee on Indian Affairs on the events leading to the Wounded Knee Massacre which most Americans have heard about. Attorney Mario Gonzalez, in his written testimony, gives an explanation of the reason for the massacres, although the Wounded Knee massacre was the largest, and in doing so opens up the knowledge of other historic sites, some of which are in the project area.

"The State of South Dakota took matters into its own hands. Governor Mellette sent hundreds of guns and ammunition to Rapid City to arm a cowboy militia he created, known as the "Home Guard." In early December, 1890, this militia devised a plan to kill Indians and collect depredation monies. They picked their best riders to cross the Cheyenne River onto the Pine Ridge Reservation and shoot at the Ghost Dancers. When the Ghost Dancers followed, they were ambushed and 75 of them were killed and scalped. The scalps and ghost shirts were taken to Chicago where they were displayed and sold."

The publication of the book, The Badlands Fox, by Margaret Lemley Warren, released in 1991, gives a first hand account by her father who was a member of the "Home Guard" and their activities in the late 1800s along the southern Cheyenne River. Included is a chapter of several accounts of massacres along the Cheyenne River to the northwest of the Pine Ridge Reservation in the areas to be traversed by the DM&E Railroad.

"There was a bunch of men there. We went over and stirred them (Indians) up and a lot of our fellows laid in at the head of a gulch. We kids went over to the Stronghold and got 'em after us and they chased us down Corral Draw. Riley Miller was at the head of it and layin' up there behind the trees and rocks. This Riley Miller was a dead shot, and he just killed them Indians as fast as he could shoot. Francis Roush, Roy Coates, George Cosgrove, Paul McClellan was with us. We killed about seventy-five of them. Riley Miller and Frank Lockhart went back there and got some pack horses and brought out seven loads of guns, shirts, war bonnets, ghost shirts and things. Riley took 'em to Chicago and started a museum. He made a barrel of money out of it." (Warren, Margaret Lemley. The Badlands Fox. Hermosa, SD: Self-published, 1991. p. 21)

The land description of this massacre is located in the **Indian Creek Badlands** which is a part of the Buffalo Gap National Grasslands and part of Badlands National Park. Indian Creek and Big Corral Draw are the largest tributaries on the east bank of the Cheyenne River. The area is called the Indian Creek Badlands and are currently under RARE II designation and proposed as additions to the National Wilderness Preservation System.

Until all archeological/historic information is available, the exact location of this massacre site in the Indian Creek Badlands and the relative position to the railroad line needs to be researched more completely. The ramifications of the site need to be considered under the Native American Graves Protection Act and the National Historic Preservation Act.

Another massacre site is described in the French Creek Area and could possibly lie in the area designated the **Cheyenne River** area of the Buffalo Gap National Grasslands. This area, with a RARE II designation and also slated for wilderness designation, comprises 9,600 acres containing a section of the Cheyenne River made famous by the movie, "Dances with Wolves", and is bordered by French Creek on the north and the Cheyenne River on the South.

"A small band of Indians were also killed by the cowboy militia in early December, 1890, on French Creek. The band had gone to Buffalo Gap to hunt at the ranch of a friendly whiteman they knew. They were greeted with a gun. They were unaware of the events that were transpiring around them. They sensed something wrong and attempted to leave. Because their horses were tired, they had to make

4.

camp on French Creek and were massacred in a surprise attack the next morning. One young woman managed to escape to tell the story" (Written Testimony of Mario Gonzalez from the Sept. 25, 1990, Hearing before the Select Committee on Indian Affairs, U.S. Senate, Washington, DC. p.7)

In Renee Sansom Flood's book, Lost Bird of Wounded Knee, she also relates a massacre that is probably the same one on French Creek, that occurred along the southern portion of the Cheyenne River.

"Black Elk knew Chief Big Foot was dead but he didn't know that, three weeks before the Wounded Knee Massacre, Chief Big Foot had sent a peaceful hunting party consisting of fifty people, mostly women, to Buffalo Gap across the Cheyenne River into non-Indian territory. They never returned." (Flood, Renee S. Lost Bird of Wounded Knee. New York, NY: Scribner, 1995. p. 47) A detailed account by the woman who escaped although wounded, is told in Flood's book. Flood also describes other entrapments and massacres of Indians on the southern portion of the Cheyenne River.

There are a number of other references to massacre sites along the Cheyenne River in Warren's book. One of the passages on page 23 specifically notes "At Cole Ranch near the mouth of Spring Creek (right about where the railroad bridge is located)." Another states, "The settlers had check points or "forts" at certain locations along the river in case Indians came around, they'd be waitin' for them." (Warren, p. 23) Another also on page 23 states, "He came down off the hill there from the table down on Spring Creek. About where Joe Reed lived later on, where that hill is comin' off of Finney Flats." However, without access to any archeological/historical information, an accurate determination of these sites to the proposed railroad line is impossible. Therefore, comments on their importance, or the ability to begin historical preservation activities are stymied.

As information about these additional sites is reaching a more wide spread audience, it is imperative that they must also be researched, preserved and protected under the National Historic Preservation Act and the Native American Graves Protection Act. Further depredation and desecration of these sites must not occur. The path that was taken by Chief Big Foot and his band to their deaths at Wounded Knee already is crossed by the DM&E railroad between Philip and Wall, SD. This fact should not allow the DM&E to destroy other historic sites.

5. Section 4.1.4.6.1 Forest Service Lands, states: "The entire 15,970 acre Red Shirt Area, including the Red Shirt RARE II and Red Shirt Inventoried Roadless Area has been recommended for wilderness classification under the USFS proposed grassland plan. The DM&E railroad will travel through this area at either the northwest or the southeast border. Either alternative will touch this area. The northwest route will be upwind of the Red Shirt area. Should fire be started by sparks from the wheels of a train, the usual northwesterly winds will push it across the Red Shirt area. A fire generated on the southeast route would endanger the village of Red Shirt on the Pine Ridge Reservation. This area was also used extensively by the Lakota people in the late 1800s. **It's environmental and historical significance cannot be understated and the Red Shirt area which is within the Buffalo Gap National Grasslands must be preserved, and protected. The building of a railroad line will offer neither preservation or protection.**

6. Section 4.1.3.1 Unique Geological Formations mentions Wind Cave National Park which has tremendous religious significance to not only the Oceti Sakowin (the Great Sioux Nation) but to other tribes as well. According to Lakota belief, the origin of man on the face of the Earth began at Wind Cave in the Black Hills. Using mathematical calculations of Lakota knowledge of constellations would place the Lakota in the Black Hills approximately 7,000 years ago.

However, in recent testimony before the US Forest Service, Rick Two Dogs, a recognized Lakota medicine man, stated that the Lakota were present in the Black Hills 11,000 years ago. This would fit with other projections of the presence of humans in the Black Hills to 11,000 years ago.

"[The Black Hills] hold within their boundaries a heritage going back billions of years to a time when the area first began to separate from its watery surroundings. It has become a haven, not only for human populations, but also for a wide number of plant and animal species, many of which could not survive outside of the Hogback Ridge. It has provided a rich backdrop for the cultural parade that began at least 11,000 years ago." (Prehistoric Hunters of the Black Hills, Cassells, P. 22-23)

Edward Raventon also talked about the early inhabitants of the Black Hills in his book, Island in the Plains. In explaining the large chips of stone flakes scattered at the base of the mountain known as Inyan Kara on the western side of the Black Hills, Raventon records the explanation given by Tim Cowan, North Zone archaeologist for the Black Hills National Forest. "The center of the saddle just below the mountain's slope, however, appears to have been the focal point of knapping activity. This small vicinity, covering perhaps thirty square yards, is strewn with stone chips and flakes in such great profusion and abundance that Cowan believes this was a primary lithic workshop area for possibly ten or eleven thousand years."

Wind Cave needs to be designated a Tribal Cultural Property for religious purposes. Air pollution and subsequent acid rain, caused by increased mining with the transportation provided by the DM&E Expansion, will directly impact Wind Cave. Alternative A, No Action must be determined to protect this significant religious area.

7. Section 4.1.3.3 Geologic Hazards states "Pierre Shale formations have a high potential for slumps or landscapes particularly in areas of steep slopes along rivers, such as the Cheyenne River." From this statement alone, **Alternative A, No Action must be the only course of action.**

8. Section 4.1.4.6.1 Forest Service Lands on page 4.1-18 mentions the pronghorn antelope.

With increased global warming, and the already extensive use of water in the Black Hills, as water becomes less accessible on the plains, it is likely that both plant and animal wildlife in the plains will gradually seek the prairie areas still remaining in the Black Hills. Many of the migratory animals have been coming to the Black Hills for centuries. The question is, will they be able to reach the Black Hills with the barrier of a railroad line.

"On October 16, 1804, Indians told Lewis and Clark, who were at that time on the Missouri above the mouth of the Grand River in northern South Dakota, that the pronghorn were currently on their fall migration west to the Black Hills to spend the winter.

"In 1862, naturalist F.V. Hayden, who accompanied many early military expeditions into the Black Hills, Badlands, and Upper Missouri River country wrote: "in the beginning of winter they (pronghorn) may be seen for days following each other in files..., leaving the prairie country for the more rugged portions of the country near the Black Hills (foothills). In the spring, usually about March, they may be seen returning again, and distributing themselves over the open prairie." Naturalist writer Ernest T. Seton also reported that pronghorn of the open country move to the Black Hills "from all points on the compass" to winter there." (Island in the Plains, Raventon. P. 72)

A railroad system such as proposed by the DM&E with forty (40) trains per day, each train approximately one mile long, would destroy any pathway for wildlife

from the prairies to the Black Hills. Future ecological significance of the Cheyenne River as a pathway for animals into the Black Hills, with the decline of the prairie and Badlands ecosystems caused by the long-term effects of global warming, needs to be researched. **Studies need to be completed on projected weather patterns and the effects such patterns would have on wildlife.**

9. In response to Section 4.1.5 Water Resources, as Cassells stated "Streams exit the Black Hills through "water gaps," the narrow cuts in the Hogback [geologic uplift] that served as principal entry points into the Hills for humans, as well as for wild game such as bison. " (Prehistoric Hunters of the Black Hills, Cassells. P. 16) These streams feed into the Cheyenne River which ultimately enters the Missouri. The Cheyenne River begins its journey in the middle of the western slopes of the Black Hills, skirts the southern portion, and drains the southeastern slopes. Any pollution in this river, or these streams will have a far-reaching effect not just in western South Dakota but downstream in the Missouri River as well. The DM&E Expansion project will increase the amount of pollution to this entire area which ultimately have an effect on the entire water system. **Alternative A, No Action must be determined in order to protect this fragile water system.**

"The Black Hills are a land of immense beauty and complexity. They hold within their boundaries a heritage going back billions of years to a time when the area first began to separate from its watery surroundings. It has become a haven, not only for human populations, but also for a wide number of plant and animal species, many of which could not survive outside of the Hogback Ridge." (Prehistoric Hunters of the Black Hills, Cassells. P. 22-23.)

In order to adequately study the long term effects on the environment caused by the disruption of such a large land area as proposed by the DM&E Railroad, and to further clarify land ownership, **research and study must be completed in the following areas: the legality of land ownership; future projected Weather Patterns in eastern Wyoming and western South Dakota and the effects on the geology, plant and animal life in those areas; research into current studies on the long term effects on plants and animals caused by other existing railroads and the Interstate Highway Systems in the United States.**

Thank you.



Charmaine White Face