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Donley Darnell

1331 Morrissey Road
Newcastle, WY 82701
(307) 746-4044

"Beneath the Eagle's Wing"

Dry Beaver Inc

D&W Livestock Inc

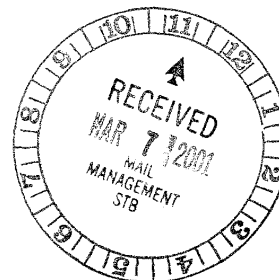
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Attn.: Victoria Rutson

ENTERED
Office of the Secretary

MAR -7 2001

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Dear Ms. Rutson:

These comments are in regard to the DM&E expansion project. I am in favor of Alternative A. However, there are a huge number of problems with the Draft EIS that must be addressed. These comments are not an exhaustive list of the insufficiencies; there may be a voluminous number of errors and deficiencies.

CBM "West of the Coal Mine" in appendix E, 3-1: "Locations of CBM development would be on the west side of the PRB."

The CBM drainage project would be located on the eastern side of the PRB adjacent to the coalmines on the eastern project boundary. Source: "Wyodak Drainage Coal Bed Methane Environmental Assessment" Bureau of Land Management, page 1-1.

2500 federal protective wells

2824 state and fee wells

7176 existing wells

For a total of 12,501 wells to be drilled by Feb. 28, 2002 (NEXT YEAR)

The statement that the CBM development is to be on the west side of the Basin is not borne out by document WY-070-01-034.

Volume IV, Chapter 5, page 5-10 DEIS states that existing emissions from CBM facilities are included in the air modeling analysis in Chapter 4, Sec. 4.4.8.

When was this written and how many wells were in existence at that time?
Who wrote that section (4.4.8)?

"Expansion of the CBM industry could cause local population to increase."

Did you allow for this expansion in your modeling?

The level of CBM development for the Horse Creek EIS was taken from Wyodak EIS. The Wyodak EIS analyzed the reasonably foreseeable CBM scenario for the "eastern PRB." The total number of wells analyzed for the Wyodak EIS has been reached. An analysis of continued CBM development in the PRB was initiated in May 2000. This is the Powder River Basin Oil and Gas EIS. It is reasonably foreseeable; it is inevitable that the cumulative impacts of CBM development have already exceeded the impacts quantified in the Wyodak EIS and the Horse Creek EIS. The DEIS for FD 33407 did not consider the level of CBM activity that is inevitable and not mere speculation. This is another case where you need to publish a revised draft, with comment period, before the STB can make any final decision. The DEIS has not presented accurate, up-to-date facts in a timely manner and the information is slanted in favor of the applicant by understating cumulative effects of CBM development on the Class I air sheds studied in the DEIS for FD 33407.

Cultural Resources:

The DEIS says that Wyoming has a long history of human occupation. The lack of known sites along the alternative is probably due to a lack of a survey. Any discoveries will be mitigated according to the PA in Appendix J. Source: DEIS 4.7-15

1. How much of the route in Wyoming have you surveyed?
2. Do you consider that you have made a reasonable and good faith effort on historic properties that may be affected by this action? (See 36 CFR § 800(4)(b))
3. You reference an unpublished report as a source of information for this DEIS (4.4.13), Fox and Sundstrom. Do you claim this satisfies 40 USC § 1502.21 that states that no material may be incorporated by reference unless it is reasonably available for inspection by potentially interested parties? Proprietary data shall not be incorporated by reference.
4. Where was this available for inspection? Who could look at the Fox Sundstrom report?
5. Have you done any paleontological surveys other than literature searches?
6. At Volume III 4.4.5.4 you state that potential for paleontological loss is high. Do you believe that you have satisfied § 106 of the National Historic Preservation Act?
7. I would expect mitigation to be intense, especially on private lands where very valuable fossils might be destroyed. Do you plan to require intense mitigation on private lands in fossil bearing soils? Will this mitigation be as intense as required on public land?

Soils-Scoping Decision

4. Geology and Soils

A. Describe the geology, soils, and mineral resources found within the project area for new rail line construction and along existing rail line to be rebuilt, including unique or problematic geologic formations or soils.

According to the Track Encyclopedia, 10th Edition, soils with plasticity greater than 12 should not be used as a fill material (emphasis added).

My preliminary research indicates that most of the soils that make up the Pierre Shale have a plasticity of 15 to 35 and that the plasticity increases with depth. I can find

no place in the DEIS where plasticity is discussed. Is it discussed in the DEIS? Is the plasticity of these soils as high as my research indicates? This would render most of the soil between Hwy. 85 in Weston Co. WY and Pierre, SD and beyond unsuitable for use as fill material. Does the DM&E plan to construct on unsuitable fill material? What are the likely consequences of running a heavy haul railroad on unsuitable fill material, i.e. derailment, slow orders, etc.?

If the DM&E plans to construct on suitable fill material, where will they get this material?

If the DM&E plans to construct on suitable fill material, where will they put the material from the cuts?

The side slope above the Cheyenne River is more likely to be Pierre Shale than is the alluvial fan along the river. Also, Alternative C would have the need for greater cuts and fills. Thus, this alternative may have more high plasticity soil than any other alternative. You check it out. This would also be a safety factor as unstable soils would lead to an increase in derailments.

Unstable soils have also been treated with a lime slurry injection. See Report No. FRA/ORD 77/30, June 1977. What are the undesirable effects of hydrated lime on the environment? My research indicates possible fish kills, algae blooms, and soil sterilization.

Track Cyclopedia, page 55, says that any unstable materials must be removed before placement of a fill. My understanding is that fine sand, silt, soft clay and silty clay all have a very poor value as sub grade and should be removed before fills are made. Does this not generally describe most of the soils in the alluvial fan of the Cheyenne River?

I request an estimate of:

1. How many yards of cut material would have a plasticity of greater than 12?
 2. How many yards of fill material would need to be imported?
 3. What is the bearing capacity, in pounds per square inch of the heavy clays common in the Pierre Shale?
 4. What is the shear strength of soils along the Cheyenne on Alternatives B & C (i.e. the side slopes of the Cheyenne River)?
- "Without a stable roadbed even high quality rail, ballast, and ties are of little value."
Track Cyclopedia, page 53.

Impaired Streams

How many impaired streams does this proposal cross?

Where in the DEIS do you discuss impaired streams?

Can a government agency issue a permit that will further impair an impaired stream?

Draft EIS Volume IV

You list some of the deleterious effects that the railroad would have on affected ranches, then you dismiss the consequences as an inconvenience to landowners. You need to do an economic analysis to quantify the cost of these "inconveniences" to landowners. You also need to analyze the loss of value to the land because of degradation of view sheds

due to the invasive nature of the rail line. The cost of operating a working landscape is increased as these working landscapes are bisected by barriers that can be crossed only at overpasses/underpasses. What would be the additional costs?

How would emergency vehicles (fire trucks and ambulances, for examples) respond across tracks with no overpasses in rural areas? What are the increased costs to rural fire districts when rail lines bisect areas with no public roads and no overpasses?

The filing of the application has also had a very deleterious effect on the price of land along the proposed route. You must quantify these costs as well. "NEPA implicitly requires the discussion of mitigation measures in impact statements by requiring the discussion of 'any adverse environmental impacts which cannot be avoided.'" § 102(2)(2) See Abbot "NEPA Mitigation: An Effective Strategy for Implementing Mitigation Plans," 6 Federal Facilities Envtl. J. 87(1995)

The courts will disapprove of any cost-benefit analysis if it is so biased and conclusory that it provides a misleading explanation of the basis on which project costs and benefits were determined. (Hughes River Watershed Conservancy v Glickman; Johnson v Davis; Conservation Soc'y of Southern Vermont Inc. v Secretary of Transportation)

General Comments

You compare Alternatives B & C in a fully engineered context with Alternative D, as is. The Engineering on Alternative D was a product of 19th century technology. You must do an apples to apples type of comparison rather than the black powder to atom bomb analogy that you draw in the current DEIS.

You make many statements in your DEIS that are not, in any way, borne out by research or supported in any way. Specific examples: 4.4 (page 31) Wells used for construction that experience reductions in yield would be expected to return to normal during project operation. Another: 4.4 (page 29) "in the unlikely event of a derailment." Another example can be found at 4.4.10.2.3. "The Impact Statement may not contain vague, general, and conclusory reasoning." See Silva V Lynn.

The DEIS must consider a full range of alternatives, not just the alternatives that compare unfavorably to the applicant's preference. For instance, the DM&E may be able to provide safe, reliable rail service by applying for federal loans through the FRA as money is now available for Class III railroads. (In fact, the DM&E has already applied for \$100 million of these loans.)

Wind energy, natural gas, etc. might provide clean energy in place of coal. Coal is at present the most environmentally challenged source of energy in the USA today.

If coal is to be the major source of electricity for the Midwest, then mine mouth generation may be a cheaper, more efficient alternative to another rail line and effectively provide more competition to present rail carriers than would the DM&E.

Gasification of coal would allow for transport of energy to the Midwest through pipelines and should be much less destructive of the environment.

§ 102(2)(E) requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."

All of the above alternatives are viable and reasonable alternatives to the DM&E proposal and, in fact, are so far along in process that they may be considered inevitable.

Another possible alternative to the DM&E switching yard in Edgemont (that is being touted as the new answer to grain hauling to the West Coast) would be a switching yard in Wolsey, SD. Trains entering the BNSF system at Wolsey would be entering the mainline grain hauling system for South Dakota. Grain could move either to the West Coast or toward the Gulf Ports. As I check the mileage, this would be the shortest route to either destination for DM&E shippers along most of the DM&E route. Why is this alternative not under consideration?

The DEIS quantifies the amount of SO₂ emissions of PRB coal (1-13 Chapter 1)

What is the estimated emission rate of PRB coal for mercury?

What is the estimated emission rate of PRB coal for CO₂?

What is the estimated emission rate of PRB coal for NO_x?

NEPA requires a "full environmental disclosure" to members of the public. The lack of information on emission rates of other pollutants is one example of where the DEIS fails this test.

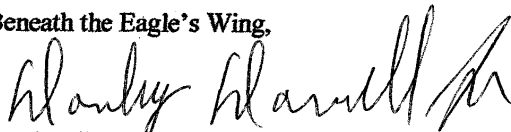
§40 CFR 1502.19 Circulation of the environmental impact statement

"However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished:

(d) in the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft."

I expect that *all* persons and organizations who commented at the Hearings and all who have written letters will be sent any intermediate and the final environmental impact statement, regardless of the length of their comment.

Beneath the Eagle's Wing,



Donley G. Darnell Jr.