

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 8
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DENVER, CO 80202-2466
<http://www.epa.gov/region08>

003010

DEC - 8 2000

Re: 8EPR-EP

VIA FAX AND MAIL

Ms. Victoria Rutson
Environmental Project Manager
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**ENVIRONMENTAL
DOCUMENT**

Re: Request for Extension of DM&E
Railroad Draft Environmental Impact
Statement (DEIS) Review and
Comment Period (STB Finance
Docket No. 33407)

Dear Ms. Rutson:

The U.S. Environmental Protection Agency (EPA) requests an extension of the DEIS public review and comment period from the existing end date of January 5, 2001 to April 5, 2001. Our Section 404 Clean Water Act (CWA) responsibilities require us to review and comment on 404 permit applications. We are coordinating our 404 review for this project with our National Environmental Policy Act (NEPA) review responsibilities as described in Section 309 of the Clean Air Act. So that we can fully review the proposed project including impacts regulated under Section 404, EPA will need to engage in significant agency coordination and on-site reviews. These activities are critical to the development of our recommendations and conclusions about the project's compliance with both NEPA and the CWA.

An additional reason for our request is that we were not included on the original list of entities to receive the 404 application, and did not receive our copy of the 404 application until Friday, October 20, 2000. Thus our review of the application could not begin until the end of October. Our review is not complete at this time because we need further clarification on the issues of (1) the project description of alternatives and the consistent analysis of impacts across alternatives to waters of the U.S., (2) discussion of basic project purpose as defined in the Section 404 (b)(1) Guidelines, (3) the least damaging practicable alternative (site specific vs. overall), and (4) proposed mitigation and its adequacy to compensate for aquatic resource losses. As we have discussed in our recent telephone conversation, a meeting is scheduled this coming



Wednesday, December 13, 2000, to discuss our questions and concerns centered around these topics. This meeting will include other Federal, and State agencies, and representatives of DM&E.

After the December 13 meeting, we will need more time to visit specific areas of predicted impact in western South Dakota and Wyoming. It will be difficult to make arrangements for and then visit these locations within the current comment period. This will be especially difficult to schedule with the upcoming holiday season.

We have also been contacted by members of the public and Tribal representatives expressing concern that copies or complete copies of the 404 permit have not been readily available for review. No Tribes were sent copies of the document. An extension would provide the Corps and STB an opportunity to more completely meet the requirements of 40 CFR 1506.6 for public involvement and to engage in Government-to-Government consultation with Federally recognized Tribes as described in Executive Orders 13175 (65 FR 67249 (Nov. 9, 2000)).

Again, we request an extension of the DEIS review and comment period to April 5, 2001. We believe the information above supports the need for, and length of the extension. As we discussed in our telephone conversation earlier this week, we wish to work closely with STB on all issues related to the DEIS. If we can provide any more clarification about our request, please call Jim Berkley at (303) 312-7102.

Sincerely,


for Cynthia Cody, Chief
NEPA Unit
Ecosystems Protection Program

