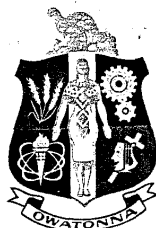


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THE CITY OF



OWATONNA

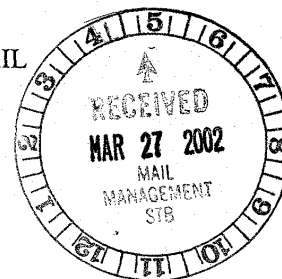
Mark M. Walbran
City Attorney
Phone: (507) 451-2020
Fax: (507) 451-8916

140 East Main Street
P.O. Box 273
Owatonna, MN 55060
walbranlaw@yahoo.com

December 11, 2001

VIA: FAX AND U.S. MAIL
(202) 565-9004

Victoria J. Rutson, Chief
Surface Transportation Board
Section of Environmental Analysis
1925 K Street Northwest
Washington, DC 20423



Re: Final Environmental Impact Statement
Finance Docket No. 33407
Dakota, Minnesota & Eastern Railroad Corporation

ENTERED
Office of the Secretary

MAR 28 2002

Part of
Public Record

Dear Ms. Rutson:

The purpose of this letter is to request clarification of Section 8.3 entitled "Mitigation Issues and Owatonna's Negotiated Agreement" commencing on page 8-5 of Chapter 8 of Volume II of the Final Environmental Impact Statement.

Owatonna entered into a negotiated agreement with the DM&E dated March 10, 2000. Paragraph 7(a) appearing on page 3 of the agreement addressed wayside noise. The agreement provided that the DM&E at a minimum would comply with the regulatory requirements imposed by the STB following the studies undertaken during the EIS process. I have attached a copy of paragraph 7(a) to this letter.

As you can see our agreement incorporated by reference the standards of mitigation adopted by the STB.

Thus, the third full paragraph on page 8-6 of the EIS is incorrect where it states:

In view of the Owatonna Negotiated Agreement, it would be inappropriate for SEA to recommend mitigation addressing specific noise receptors in Owatonna.

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The City of Friendliness and Beautiful Parks*

Similarly, footnote 4 on page 8-6 is erroneous in that it says that the City of Owatonna will not receive "the wayside noise mitigation that would require DM&E to mitigate noise impacts that would be experienced by specific noise sensitive receptors in this Final EIS. . .".

This plainly disregards paragraph 7(a) of the agreement which specifically provides:

DM&E shall at a minimum comply with the regulatory requirements imposed relative to this issue, if there are any.

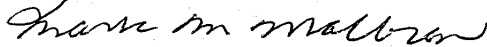
Any interpretation that would say that City of Owatonna would not receive wayside noise mitigation would yield the anomalous result that those cities which did *not* enter into an agreement, such as Rochester, would receive the benefit of the mitigation requirement set out in Section 12.9.1.7 but that those cities which *did* enter into mitigation agreements would not.

Accordingly, the City respectfully requests that the STB provide the City a letter indicating that the noise and vibration mitigation requirements set out in Chapter 12 and specifically Section 12.9.1.7 of that Chapter be recognized as applicable to the City of Owatonna.

Thank you.

Very truly yours,

OWATONNA CITY ATTORNEY



Mark M. Walbran

MMW:ras

Enclosures

c.c. Greg Sparks/City Administrator
Kevin Schieffer/President DM&E

improvements, training, public education and awareness, etc. DM&E shall make a draft of the Safety Plan available to the City for comment and input prior to its completion. It is DM&E's intention and expectation that the Project and its Safety Implementation Plan will result in an overall safer rail system than exists today. In that regard, the Rebuild portion of the existing rail infrastructure through the City shall be replaced with high quality heavy gauge steel rails, new rail ties for a majority of existing rail ties, and significantly improved rail-bed, including substantial additional ballast. DM&E shall develop new rail traffic control and communications systems. DM&E shall fund a significant upgrade to its grade crossing system, including those City-specific improvements identified in Appendix 1 of this Agreement. DM&E shall continue to work with appropriate safety agencies and technical experts to verify the effectiveness of or improve its overall Safety Plan, and in the event additional system-wide improvements are adopted such improvements will be applied to the City regardless of whether or not they are specified in this Agreement.

6. Traffic. DM&E shall undertake reasonable efforts to improve or mitigate traffic impacts relative to the Project. DM&E shall continue to work with the City in an effort to improve traffic flows through operational planning, track design, and/or use of reasonably available technology or other means available to the parties.

7. Noise. It is recognized that the single biggest noise impact issue is the train whistle. DM&E acknowledges the City's requirement that it minimize whistle noise. The parties agree to cooperate with each other and appropriate regulatory agencies to provide an environment conducive to safe, whistle free operations, consistent with the policies and conditions set forth herein, with the goal of achieving whistle free status within some or all of the City limits.

(a). With respect to non-whistle noise impacts, it is the parties understanding that the federal EIS process will employ proven scientific means of measuring and/or estimating noise impact issues, applying standards consistent with past caselaw and STB policy. It is understood that this scientific analysis is expected to identify certain impacted receptacles within a defined noise contour line, and may or may not require certain remedial measures with respect to such receptacles depending on the scientific analysis. The parties do not have sufficient information at this time to assess the likely outcome of that analysis. DM&E shall at a minimum comply with the regulatory requirements imposed relative to this issue, if there are any. Further, it shall work in good faith with the City to explore any reasonable and cost effective means of improving upon the effectiveness of such mandatory mitigation measures if any are found to be required as part of the regulatory conditions. That issue will be negotiated further if requested by the City following development of such specific information.

8. Grade Crossings. The City grade crossings within the City limits are as listed and at the locations specified in the map at Appendix 1 to this Agreement. DM&E shall at a minimum install crossing protection or traffic control devices at levels specified in Appendix 1. Said levels are tied to average daily train traffic levels. DM&E shall provide to City on or before March 31 of each full calendar year following completion of Project construction and operational commissioning (which construction and commissioning shall be deemed completed

site-specific mitigation measures listed in Chapter 12 apply only to those communities and other areas without Negotiated Agreements.⁴

To ensure implementation of all of the Negotiated Agreements, SEA recommends that the Board impose an environmental mitigation condition requiring that DM&E comply with each of the Negotiated Agreements. Moreover, if other Negotiated Agreements are executed and submitted to the Board after publication of this Final EIS, SEA recommends that the Board require compliance by imposing an appropriate environmental condition to replace the local and site-specific mitigation that otherwise would be imposed for that community or other entity.

Commenters on the Owatonna portion of the project expressed concern that the Owatonna Negotiated Agreement, while providing mitigation for train horn noise in the form of four-quadrant gates on both the DM&E and I&M rail line to facilitate potential future whistle-free train operations through those crossings, does not provide any mitigation for wayside noise. Commenters asked that SEA recommend mitigation to mitigate the potential impacts to residences along the existing rail line in Owatonna due to wayside noise.

cf. See 79 of Agreement

In view of the Owatonna Negotiated Agreement, it would be inappropriate for SEA to recommend mitigation addressing specific noise receptors in Owatonna. Recommending that such mitigation be imposed in a community where an agreement has been successfully negotiated would defeat the purpose of Negotiated Agreements, which is to arrive at voluntary, mutually satisfactory arrangements between the railroads and the affected community.⁵ Thus, the Board's consistent practice has been to decline to intervene in the parties' negotiations. Nor has the Board imposed restrictions on, or additions to, the content of the parties' negotiations.

SEA notes, however, that several of its recommended general mitigation conditions — which would apply to Owatonna — are designed to minimize wayside noise. These conditions, presented in Chapter 12, include replacement of old rail, ties, and ballast with upgraded materials (including continuously welded rail), maintenance and replacement of worn wheels ("flats"), lubrication of curves, removal of unnecessary rail switches, and other measures.

⁴ All of the general mitigation in this Final EIS, however, would apply to Owatonna and the other communities that have entered into Negotiated Agreements with DM&E. Specifically, with the exception of the grade crossing improvement mitigation, the mitigation for permanent fencing, and the wayside noise mitigation that would require DM&E to mitigate noise impacts that would be experienced by specific noise sensitive receptors in this Final EIS, all of the recommended general mitigation conditions in Chapter 12 would apply.

⁵ Negotiated Agreements by their very nature involve compromise and give and take, with neither party getting everything that it wants.

cf. See 79 of Agreement