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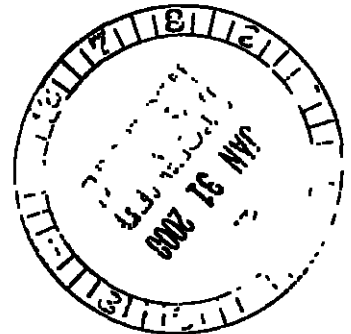
January 25, 2008

Mr. Vernon Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Suite 101
Washington, D.C. 20423-0001

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Re. Finance Docket No. 35081 - Canadian Pacific Railway Company, et al Control -
Dakota Minnesota & Eastern Railroad Corporation, et al.

Dear Secretary Williams:

On behalf of the Committee for a Safer Brookings, I would like to comment on the acquisition of the Dakota, Minnesota & Eastern (DM&E) Railroad by the Canadian Pacific (CP) Railway Company. My purpose in submitting a statement in this matter is to bring the relevant concerns of Brookings, South Dakota, to the attention of all parties involved. I note that, to date, very few communities along the current DM&E/IC&E route and even fewer citizens' groups have filed regarding this issue. They may feel intimidated by the process involved or they may assume that others will speak for them. I fear that failure to present legitimate concerns at this stage in the process might result in a failure on the part of the Canadian Pacific and the Surface Transportation Board to address the concerns of trackage communities.

The Committee for a Safer Brookings does not object to Canadian Pacific's acquisition of DM&E. However, we do not want this process to proceed without due consideration of the needs of communities such as ours. Brookings' relationship with DM&E has been somewhat strained. We would like for our relationship with Canadian Pacific to be better. And, that depends on their willingness to consider our community's needs.

In my statement, I will address the following points: (A) An Introduction to Brookings, South Dakota, (B) What is the Committee for a Safer Brookings (CSB)? Why was it

formed?. (C) What were the primary issues on which the members of the CSB agreed?, (D) Brookings Railroad Issues, (E) How the threat of coal trains changed things, (F) Is coal our only concern?, (F) Summary and Final Statement

A. An Introduction to Brookings, South Dakota

Brookings' Chamber of Commerce uses the phrase *Brookings, Some Place Special* as their slogan. When I first came here in 1992, I thought that the phrase sounded a bit arrogant. After all, didn't every city see itself as some place special? However, over the last 15 years, I have come to believe that Brookings is special in a number of very important ways

Brookings is the site of South Dakota State University (SDSU). With over 11,000 students, SDSU is the largest institution of higher education in the state. What makes Brookings special is that it is not a college town Or, at least, it is not only a college town. Brookings has a number of manufacturing concerns (ranging from large to very small) and, if the college went away tomorrow, the city would still exist. The manufacturing concerns and the academic talent in Brookings seem to have recognized that they have a unique opportunity to work together toward common goals and for their mutual benefit. This is true in the manufacturing, the medical and the agricultural sector.

South Dakota State University is a land grant institution. Its mission is to engage in research that will benefit the citizens of the state. SDSU does an excellent job in fulfilling this mission and its interaction with local and regional businesses is one of the factors that make Brookings a very special place. The fact that the state has chosen to locate a new research park between the university and a large manufacturing area is another indication of Brookings' leadership role in the state

Brookings is an active town with a vibrant central business district Daytime finds a good portion of Brookings walking, running or biking (when the weather permits) Evenings find people out and about shopping or in meetings and clubs Brookings is an engaged and an engaging city.

The area in which I live is just north of the railroad tracks I was attracted to this area because of the trees. Even though this area was only developed in the 60s and 70s, the trees have grown to the point that they form an arch over the streets. The city takes great pride in its trees and in its parks. Even the downtown area has trees and the city crews plant flowers or decorate light posts with greenery with each seasonal change.

There is a shortage of labor in Brookings and also a shortage of affordable housing as even modest houses, like mine, have risen in value over the years. Brookings is growing to the south and that has created some concerns regarding the railroad line that bisects the city. The railroad and its future are not the only issues on the minds of Brookings residents, but they have been an important issue for the last 10 years.

B. What is the Committee for a Safer Brookings (CSB)? Why was it formed?

The Committee for a Safer Brookings (CSB) is composed of a very large and very diverse group of people with widely divergent views. We came together to oppose the Community Partnership Agreement (CPA) that the City of Brookings had signed with the DM&E. We collected enough signatures on a petition to refer the decision to a vote of the people and we won the election to reject the CPA by a margin of 56% to 44%. It should be noted that our Committee won this election despite strong opposition from some city leaders and despite heavy campaign spending by DM&E's GOTRAC (Growth Opportunities Through Rail Access Coalition) group.

C. What were the primary issues on which the members of the CSB agreed?

Our concerns with the CPA were the following. (1) it did not provide our community with adequate protection, (2) it required very little, financially, of the DM&E, (3) it required our City to endorse a commercial venture (the Powder River Basin Expansion Project) by a private company from which the City would receive no benefit. There were some in our group who took issue with the transportation and use of coal for environmental reasons. Others objected to the CPA because it had been signed with very little input from the public. But the three reasons cited above were the core of our concerns.

D. Brookings Railroad Issues

The formation of the CSB was a reflection of the community's previous concerns with the railroad. These concerns began when the DM&E first announced the Powder River Basin Expansion Project in 1997. Initially, those concerned with this project attempted to work with the DM&E to achieve some kind of compromise that would be acceptable to all parties. However, it soon became clear that the DM&E had no interest in compromise. Their negotiating stance was both inflexible and arrogant.

The DM&E seemed to believe that it had claimed title not only to a railroad, but to a 19th Century system in which railroads were the life blood of communities and could make unilateral decisions regarding those communities. However, the situation in Brookings today is vastly different from the situation in 1879 when the first train entered Brookings County. Today, the entire economic and social life of the community is no longer dominated by the railroad. And, the railroad's role as a means of personal travel ended almost 50 years ago.

In the 1960s and the 1970s, when many railroad lines were being abandoned, the City of Brookings decided to open trackside areas to residential development. They assumed that the railroad would cease to exist and that the former railways would become hiking and biking paths. And, that would have been the case had not the DM&E purchased the rail lines of the failing Chicago and North Western Railroad in 1986.

E. How the threat of coal trains changed things

For a time the DM&E, with its 2-4 trains a day, posed no threat to the Brookings community. The trains did not seriously interrupt traffic even during harvest when they were more frequent. However, the announcement of the Powder River Basin Expansion Project changed Brookings' view of the railroad.

First, this project meant that many more and much longer trains would be coming through Brookings each day. Second, these trains posed a series of threats to the community. More frequent and longer trains meant a disruption of the flow of traffic between those areas north and south of the tracks. The fact that these trains would be carrying coal also raised concerns regarding pollution and health issues.

F. Is coal our only concern?

The threat of 30 or more coal trains running through Brookings on a daily basis may have been the factor that caused many people to consider how the railroad affected their lives. But, that initial concern was merely an impetus to the consideration of two other issues. The first is the concern regarding what a railroad can transport through a community. The second resulted in a study of the changing demographics of the City of Brookings.

As the CSB and other concerned Brookings citizens began to research the effects of the coal trains on our community (concerns that included vibration impact and pollution), we also began to take notice of derailments and spillages, particularly those involving hazardous chemicals. Some of these incidents occurred in other areas of the country. But, we knew that DM&E carried hazardous chemicals and that made us aware that our community was also at risk.

Of all the hazardous products that the DM&E carries, the one that concerns us most is ethanol. This is not because ethanol is the most hazardous of all the products that the DM&E hauls. It is because the rail line currently carries so much of this product. This is not an unsubstantiated observation. In a November 5, 2006, letter to the editor that appeared in the **Brookings Register**, Kevin Schieffer, CEO of the DM&E stated: *The number of ethanol cars moving through Brookings County alone has grown from 188 cars in 2002 to 4,500 cars in 2006—a 2,300% increase in hazardous materials in four years, with much more growth expected in the future.*

It should be noted that corn-based ethanol is not the only fuel being developed in this area. A new biodiesel refinery is being planned in Volga, just 7 miles to the west of Brookings. And there is a great deal of interest being shown in the production of cellulosic ethanol in nearby towns.

Neither the products hauled by the railroad nor the quantity of these products would be of great concern were it not for the proximity of the railroad tracks to so many homes and businesses. This proximity is evident to anyone who goes from north to south in the city. However, it was only recently that I had an opportunity to investigate the changing

demographics of Brookings and to illustrate why the presence of the railroad in its current location is much more disruptive than it has been in the past.

As a result of the defeat of the Community Partnership Agreement between the City of Brookings and DM&E, the Brookings City Council formed a nine-member Brookings Railroad Safety Committee. I served on that committee and did some research on the changing demographics of our city. The entire report of that committee is appended to this letter. At this point, I would call attention to four tables included in the report that focus on the belief that Brookings is rapidly becoming a city divided by a railroad.

A brief word about the nature and direction of the city's growth is needed to provide some context to the four tables below. In the mid 20th Century, the railroad ran along the southern edge of Brookings. To the south of the railroad, one could find farms, the county fairgrounds and only a few residents who proudly proclaimed themselves to be "Southsiders."

However, as the railroad began to carry fewer and fewer goods and passengers, and as many railroads were going out of business, the city decided to open up lands to the north and later the south of the rail line to residential and commercial development. If the city were to grow, they didn't have too many other choices. Brookings is bounded on the east by Interstate 29, to the north by lands belonging to SDSU and to the west by a flood plain and more SDSU holdings.

So, if Brookings were to grow, and grow it did, it would have to be to the south. When I came to Brookings in 1992, the Hillcrest neighborhood in which I live was already well established. There were also well-developed areas south of the tracks as far as 8th Street South. However, nothing could have prepared me for the kind of growth that has taken place in the last 10 years. Not only has the number of new building permits increased, but the percentage of these permits for houses south of the railroad tracks is rather astonishing.

**New Single Family Building Permits Issued
in the City of Brookings, 1998-2007
(Includes the 3-mile area)**

Year	Permits Issued	Permits Issued for Homes South of the Rail Line	
1998	64	63	98%
1999	46	46	100%
2000	40	40	100%
2001	56	56	100%
2002	77	77	100%
2003	51	51	100%
2004	104	104	100%
2005	126	126	100%
2006	130	130	100%
2007*	40	40	100%
Grand Total	734	733	99.8%

As Brookings has grown to the south, the percentage of registered voters living north and south of the tracks has also changed.

**Brookings Registered Voters
(April 10, 2007)**

Precinct Number	Number of Registered Voters	North or South of the Rail Line
Precinct 1	1391	North
Precinct 2	1591	North
Precinct 3	1690	
Divided*		
Precinct 4	2135	North
Precinct 5	2793	South
Precinct 6	1835	South
Total	11435	

*If Precinct 3 voters were divided equally between those who live north and south of the rail line (i.e., 845 voters for each side), Brookings voters would be almost equally divided by the railroad tracks

While residential development has grown to the south, the vast majority of jobs in Brookings are north of the rail line.

Brookings Six Major Employers*

Name of Employer	Number of Employees	North or South of the Rail Line
South Dakota State University	1700	North
Daktronics	1600	North
3M	775	South
Larson Manufacturing	600	North
Brookings High School	335	South
Rainbow Play Systems	327	North

* From a 2006-2007 City of Brookings telephone survey

It should come as no surprise that the growth of residential housing south of the rail line and the existence of employment north of the rail line would create some traffic issues. The average daily traffic counts (ADT) reflected in the 2001 Final Environmental Impact Study were from a 2000 study. A 2005 study revealed traffic increases of between 33% and 61% on the streets crossing the railroad. Although the busiest road in Brookings was not included in the 2005 count, one could estimate (using the 33% and the 61% figures) that those counts would have been between 16,895 to 20,452 vehicles a day.

Average Daily Traffic Counts (ADT) at Rail Crossings: A Comparison

Avenue*	2001 Final Environmental Impact Study (FEIS)*	2005 Brookings Traffic Count Map	Percent of Increase
22 nd Avenue	12,703	**	**
17 th Avenue	3,025	4,870	61%
Medary Avenue	6,440	8,565	33%
Main Avenue	7,988	11,290	41%
Western Avenue	2,630	4,235	61%

* All north-south streets in Brookings are called avenues

One community concern that is not reflected in the section of the Brookings Railroad Safety Committee report cited above is the issue of emergency vehicles and their ability to respond to incidents when a train blocks the railroad tracks. There is only one viaduct that emergency vehicles could use in the event that they could not cross the railroad tracks and that area is prone to flooding. According to one volunteer fireman, fire fighters frequently discuss this issue.

G. Summary and Final Comment

According to its Chamber of Commerce, Brookings is *Some Place Special*. In objective terms, Brookings is a vibrant, growing community that continues to work hard to improve its economy and its quality of life. In terms of the city and the railroad, Brookings is one of the communities along the DM&E tracks that would be most affected by an increase in rail traffic. An accident on a segment of the DM&E tracks that run through Brookings could affect hundreds, if not thousands, of people.

But, Brookings is something more. It is a community that is trying to discover whether it has a right to a say in its own future. Brookings' Mayor, Dr. Scott Munsterman, has taken a pro-active approach to the railroad issue. He is attempting to form partnerships with other towns and counties that are facing railroad concerns similar to those in Brookings. However, his efforts could be thwarted by a railroad that takes an imperial stance toward the communities along its route.

Brookings shares many concerns regarding safety with other trackside communities. Regardless of the size of the community, its citizens must be concerned with the number of trains going through it each day and with what those trains carry. However, Brookings is unique in the number of homes that line the tracks. The railroad's right of way through Brookings is only 50 feet wide in most instances. It is not uncommon to find houses that are only 100 feet from the center of the railroad tracks.

Brookings is also unique in the degree to which the railroad has increasingly disrupted traffic. The traffic counts listed above give some idea of this disruption. But, they do not record either pedestrians or the numerous cyclists that cross the tracks each day. And, ironically, in Brookings, almost anyone of any economic stature lives on *the other side of the tracks!* And, we are a city of walkers and bike riders.

The Committee for a Safer Brookings is filing in the matter of the Canadian Pacific Railway's purchase of the Dakota, Minnesota and Eastern Railroad because we are concerned with preserving the way of life of people who live in Brookings. We ask that the needs of our community and of all trackage communities be taken into consideration as this purchase is reviewed.

Sincerely,

A handwritten signature in black ink, reading "Karen Hardy Cárdenas". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Karen Hardy Cárdenas
Chair, Committee for a Safer Brookings
316 17th Avenue, South
Brookings, SD 57006-2704

BROOKINGS RAILROAD SAFETY PLAN

THE REPORT OF THE BROOKINGS RAILROAD SAFETY COMMITTEE

**PREPARED FOR
THE BROOKINGS CITY COUNCIL
BROOKINGS, SOUTH DAKOTA**

Adopted June 27, 2007

BROOKINGS RAILROAD SAFETY PLAN
The Report of the
BROOKINGS RAILROAD SAFETY COMMITTEE
June 2007

*"Though force can protect in emergency, only justice,
fairness, consideration and cooperation can finally
lead men to the dawn of eternal peace "*

Dwight D. Eisenhower

EXECUTIVE SUMMARY

The Brookings Railroad Safety Committee (BRSC) was established by the Brookings City Council in response to a voter referred Community Partnership Agreement (CPA) between the City and the Dakota, Minnesota and Eastern Railroad. The BRSC was charged with reviewing the CPA, seeking public input relative to safety measures, and reporting its conclusions to the City Council. The BRSC received testimony from knowledgeable witnesses, identified and reviewed community safety concerns, reviewed community rights and developed an overview of the situation for the community. Based on the findings of the investigative processes, the BRSC proposed solutions to address community safety demands, identified potential funding to facilitate the solutions, recommended establishing the Brookings Community Rail Authority, proposed an Interim Brookings Rail Plan, and identified a series of issues requiring immediate consideration and action.

A. INTRODUCTION

President Eisenhower's thoughtful reflection on collaboration provides a wonderful vision of cooperation and peace between the Dakota Minnesota & Eastern Railroad and the City of Brookings. That process requires that the two entities reach an acceptable agreement relative to a community endorsement of the railroad's expansion and that the railroad accept the identified safety and health requirements of the people of Brookings. With both parties agreeing to work together to accomplish their needs, the dawn of peace can be achieved.

A Brief Overview

For many years, railroad traffic was not an issue in Brookings. The town grew and areas were rezoned with no particular concern for the railroad tracks that had existed in the city since the late 19th Century. However, in 1997, the Dakota Minnesota and Eastern Railroad announced that it was seeking Surface Transportation Board (STB) approval to rebuild its existing track and extend its reach into the coalfields of Wyoming. The result would be a state-of-the art rail system running 34 trains a day across South Dakota on the DM&E track. For Brookings, the impact of that plan would mean that every day, some

102 diesel engines and 3,910 gigantic coal carrying railcars would rumble through the heart of city at speeds of 45 to 50 mph while blocking traffic for approximately 102 minutes

Many saw this plan as a boon to the South Dakota economy. Others saw it as a threat to life in Brookings, their "Someplace Special." In 1997, Mayor Wayne Hauschild established the Brookings Mayor's Ad Hoc Committee on the DM&E Rail Proposal (the Powder River Basin Coal Train Project) to determine community concerns relative to the railroad's proposal. The committee completed its report in 1998

During that process the railroad was reluctant to discuss the concerns of Brookings. The DM&E wanted Brookings to endorse its project without insisting that the city's own interests be protected. Brookings refused and for several years no further significant collaboration occurred.

In 2006, the Brookings City Council, without what some believed to be adequate community input, developed a Community Partnership Agreement (CPA) with the DM&E that they perceived as a solution. Unfortunately, the process did not account for the desires of the people of Brookings. As a result the CPA was referred to a public vote and was repealed. As a result of the repeal process, Mayor Scott Munsterman and the Brookings City Council established the Brookings Railroad Safety Committee to address the concerns of the Committee for a Safer Brookings and others within the community.

The timing and importance of this report gained further relevance on June 13 and 14, 2007 (Attachments 1 & 2) when two major news releases indicated that the DM&E is either "selling, buying or reshuffling." Whatever the case, now is the time for the City of Brookings to take charge of its future, reassert its safety and health needs and requirements with whatever railroad(s) or organizations might serve the community.

B. THE BRSC MISSION

Brookings City Resolution No. 06-07, adopted January 9, 2007, enumerated three purposes of the Brookings Railroad Safety Committee: (1) review the Community Partnership Agreement (CPA) between the City of Brookings and DM&E Railroad which was referred by the voters, in order to determine if the CPA should be revised to improve the safety measures contained therein, (2) receive public input through public hearings concerning railroad safety issues pertaining to the proposed DM&E Railroad expansion project and (3) report regularly to the City Council on its findings and hearings and at the conclusion of its proceedings . The resolution further specified that the Committee "shall work independently of the City Council and that the report of the Committee shall be limited to proposed specific safety measures which relate to the proposed DM&E Powder River Basin expansion project."

C. THE PROCESS

The focus of the Brookings Railroad Safety Committee was to examine railroad safety

within the City of Brookings, to investigate the railroad safety concerns of its citizens, and to develop an immediate and long-term safety report and recommendations for presentation to and consideration by the Brookings City Council. In order to accomplish those tasks, the Brookings Railroad Safety Committee held numerous public meetings over a six month period. These meetings were designed to provide committee members a high level of understanding of safety concerns and direct and relevant input from expert witnesses with knowledge of engineering, railroads, safety, communities, laws, and solutions.

The meetings sought to provide everyone an opportunity to be heard. At the meetings and elsewhere in the community committee members listened to various concerns expressed by private citizens. The public meetings also provided committee members with access to individuals with historical knowledge, desired expertise, and professional insights, with the focus on the relevant safety concerns of the community. Committee members also read a variety of studies, government documents, and media articles and visited numerous rail, government agency, safety, and other related websites.

Throughout this process, the goal of the committee has been to address the central issue of safety and related health issues for the people of Brookings and to propose solutions that best address the long-term railroad related protection needs of the community. Finally the committee's report must clearly reflect the safety concerns and wishes of the community to city leadership. The Brookings City Council must then act to protect the community by developing processes and conveying community concerns and expectations to the railroad(s), state and federal governments. That is the purpose of this report.

D. TESTIMONY

The testimony presented at public meetings provided members of the Brookings Railroad Safety Committee access to individuals with historical knowledge, desired expertise, and/or professional insights relative to railroad safety and to the safety concerns of the community. The following is a brief summary of the information presented:

1. Dr. Ed Hogan, Chairperson of the Brookings Railroad Safety Committee reviewed the Brookings City Council's charge to the committee. He also presented a historic overview of the *Report of the Brookings Mayor's Ad Hoc Committee on the DM&E Railroad*, from October 5, 1998. That report was the culmination of a year long investigation of the impact of the proposed DM&E expansion on the Brookings community.
2. Mr. Dennis Micko, Professional Engineer with Banner Associates presented an overview of feasibility studies that his company completed in 1998 and 2001 for the City of Brookings relative to railroad bypass routes. His report primarily addressed the history and feasibility of various railroad bypass route investigations. These studies indicated that there are a variety of feasible bypass routes around the community. Copies of the original Banner Associate reports to

the City are available in Brookings City Hall. In response to questioning, Mr. Micko discussed the possibility of depressing the roadbed through the city. He indicated that, while it was discussed in 1998 and 2001, to his knowledge no detailed engineering was ever undertaken. Mr. Micko also answered committee member's questions regarding other mitigation options.

3. Dr. Douglas O'Neill and his wife Ms. Mary O'Neill (both South Dakota State University faculty members) presented a report to the committee on the use of aerial photography and GIS (geographic information system) software as a means of better understanding the land area that is impacted by the railroad line. The methodology for use of these technologies was discussed and presented to committee members. Dr. O'Neill also reported a seeming lack of interest by South Dakota's congressional members to respond to the BRSC's requests for information and discussions.
4. Dr. Scott Munsterman, Mayor of Brookings provided the BRSC with background on and an explanation of the 2006 Community Partnership Agreement (CPA) between the Brookings City Council and the DM&E Railroad. He indicated that prior to 2006 there were 4 or 5 CPAs drafted, none of which was deemed acceptable to the present Council. The City Council was not satisfied with the safety requirements prescribed by the Surface Transportation Board (STB) in its Final Environmental Impact Study (FEIS) and they approached the DM&E. Specific concerns with the STB requirements were the level of protection at major intersections in the city as well the timing of installation of gates. Mayor Munsterman indicated that the CEO of the DM&E would not discuss a bypass. Other types of mitigation (overpasses and underpasses) were considered as future possibilities. Mayor Munsterman indicated that Brookings did not ask for money when it approached the DM&E regarding the CPA. He said that the Council's sole concern was safety. Regarding gated crossings, he indicated that the cost of quad gates was discussed and estimated that they could range from \$135,000 to over \$250,000 per crossing.
5. Mr. Fred Seymour, a member of the 1998 Brookings Mayor's Ad Hoc Railroad Committee, attended several BRSC meetings. He was asked to share some observations and concerns with the committee. Mr. Seymour focused on two issues: the attempt to have Brookings take control of a 16-mile stretch of rail, including through town, at a point between the issuing of the Environmental Impact Statement (EIS) and the Final Environmental Impact Study (FEIS); and the current concern with the DM&E's decision to establish a uniform track with a 200-foot right-of-way. If the latter were true in all regards, it would require condemnation of property along the right-of-way in Brookings. The former referred to 1998 discussions concerning the potential of purchasing the DM&E track through the city with the proceeds utilized to build a new high speed bypass around the community. The city railroad would be utilized to switch cars from the DM&E to local manufacturers and shippers.

- 6 Mr Mike Reitz, Brookings City Councilor, served as an Ad Hoc Member of the BRSC. In that role and as a member of the Brookings Volunteer Fire Department, Mr. Reitz was asked for input on several occasions. His responses included an explanation of the strategies and procedures developed by the City of Brookings and its public services and safety agencies. He explained the plans and procedures in place for emergency response to various situations. Such instances include train derailments, hazardous waste spills, and various other emergencies. Mr. Reitz also helped answer committee members' concerns relative to other aspects of local government and the fire department.
7. Mr. Todd Struwe, Director of Brookings County Emergency Management, addressed issues and responded to numerous questions that pertain to possible railroad derailment within the City of Brookings and adjacent communities. Mr. Struwe reviewed the Brookings City and Brookings County Hazmat plan with emphasis on safety concerns relative to rail transportation and potential accidents. He stated that the Hazmat plan addresses potential hazards and the community resources necessary to respond to them and that it affects both fixed facilities and transportation links (air, highway and rail). He indicated that both the Brookings County Emergency Management Team and the Brookings Fire Department are trained in response and have in place operational procedures to deal with a variety of potential emergencies.

Mr. Struwe also indicated that because of limited resources, Brookings does not have a formal Hazmat Team like that found in Sioux Falls, Rapid City, Aberdeen and Watertown. Response in Brookings is managed through a pre-approved plan that includes an incident manager and responders who can identify the various materials, and attempt to react and perform at a technician level. He said that the city does receive early notification of special Hazmat shipments scheduled to pass through the city. He indicated that even less is known about any potentially dangerous materials shipped via FedEx or UPS.

Mr. Struwe stated that the local community has no control over the condition of the railroad track. He also said that we do not have a special Hazmat route for either motor vehicles or trains. In response to a question, Mr. Struwe noted that modeling software programs exist which reveal potential threats in the event of a Hazmat incident. Mr. Struwe also indicated that if the DM&E were upgraded to a Class I railroad, it would be allowed to haul nuclear materials through the community. Currently nuclear material passing through Brookings is limited to highway routes.

8. Mr. Ardell Brede, Mayor of Rochester, Minnesota, accepted an invitation to visit with the Brookings Railroad Safety Committee. Mayor Brede and Mr. Tom Smith from the Mayo Clinic shared the podium for their presentations. Mayor Brede presented an illustrated PowerPoint overview of Rochester's railroad related safety concerns. His presentation was designed to demonstrate to the committee the enormous safety and health concerns that the City of Rochester

faces from any possible derailment or spillage of a hazardous material within the city. Because of the location of the railroad track in relation to the hospitals and residential neighborhoods, the impact of an agricultural chemical, chlorine, or other hazardous waste derailment or spillage would be devastating to the people of Rochester. One could easily conclude that, because of the location of the track within our city and its proximity to essential safety and health services, Brookings faces a similar risk. According to Mayor Brede, the City of Rochester and the Mayo Clinic will do everything in their power to prevent the railroad from enhancing its line unless it addresses their concerns for the safety of the community. Mayor Brede and Mr. Smith responded to 25 questions from the members of the BSRC.

9. **Mr. Tom Smith, Director of Emergency Preparedness at the Mayo Clinic in Rochester, Minnesota, reiterated what the Mayor Brede said about the dire consequences to Rochester and the Mayo Clinic hospitals and campuses if a hazardous material derailment or spillage were to occur. Mr. Smith provided examples of the large number of potential casualties, if a derailment of hazardous materials were to occur near the Mayo Clinic. He also focused on numerous accidents and safety concerns related to the DM&E railroad. The point of both the presentations of Mayor Brede and Mr. Smith was to clearly illustrate that an accident in either Brookings or Rochester would have a huge impact with a significant loss of human life a real possibility. Both Mr. Smith and Mayor Brede stated that all the political clout they can muster will be used to reroute the railroad around Rochester.**
10. **Public Comment Session: An open meeting with the people of the community was held seeking their comments regarding railroad safety. At the meeting, attended by approximately a dozen people, only two came forth to voice their concerns. One citizen voiced concern regarding possible deaths caused by railroad accidents. He also suggested that crossing bars be installed at all railroad/road intersections within the city. A rural resident voiced opposition to a rail bypass around the city. Two committee members read letters from citizens. The first focused on a detailed list of safety questions and concerns that the writer would like addressed. The second concerned the impact that coal trains would have on health emergencies. The author had recently faced a serious health problem and believed that he might not have survived if the coal trains had been running through town at that time.**
11. **Ms. Susan Tracy, from the South Dakota Department of Transportation presented the committee with important facts and figures regarding railroad safety in South Dakota. She also responded to questions of concern that were given to her by the committee members. Ms. Tracy made it clear that the state has little involvement in railroad and community negotiations, issues, or agreements. She indicated that the state has some 1800 active railroad crossings; of those, 200 have lights. She also indicated that in recent years South Dakota has had fewer than 14 railroad**

crossing incidents per year. Ms. Tracy said that the speed of the train going through the city is regulated by federal not state policy

12. Mr. Steve Britzman, Brookings City Attorney reviewed the local government's history and concerns as reflected in written communications relative to the proposed DM&E railroad expansion and related matters. Mr. Britzman stated that between 30 and 40 memos from the late 1990's to present have been issued by the city with regard to railroad issues. He indicated that he believed that the term 'preemption' and the meaning of its legal impact relative to the city and railroad should be looked at closely. He also reviewed the matter of right of eminent domain and indicated that the city should be aware of it and its possible implications.

Mr. Britzman also gave each member of the BRSC an impressive collection of documents entitled **Review of Laws Related to Community Rights and Railroads**. This volume represents Mr. Britzman's research into this area and includes lengthy sections that address each of the following: (1) District Judge Piersol's Decision (March 28, 2006), (2) District Judge Kornmann's Decision (July 7, 2003), (3) Federal Statutes, (4) South Dakota Statutes, (5) South Dakota Case Law, and (6) Case Law (Preemption).

E. REVIEW OF BROOKINGS SAFETY CONCERNS

As a result of testimony, readings, previous studies, and citizen input during the information gathering process, the BRSC created a detailed list of significant safety concerns. The concerns are examined here to provide an understanding of the impact of each on the safety of the people of Brookings.

The BRSC is not the final authority on any of these matters. It must, however, provide the city leadership with an understanding of the concerns, expectations and safety protections desired by the people of Brookings.

As a clarification, some of the specific health and safety issues examined in this section were addressed in the 1998 Report of the Brookings Mayor's Ad Hoc Committee on the DM&E Rail Proposal. Insofar as certain issues may have changed little since then, this discussion may revisit some of what was presented in that report.

1. Community Environmental Safety Concerns

A. Community Safety

Various aspects of the railroad traffic through Brookings pose risks to the safety and well-being of Brookings residents. These risks are chiefly related to projected increases in train traffic through the city (adding up to 34 coal trains daily to the current average of 3-4 trains hauling grain, ethanol, lumber, and other regional products), the increased speed and

motive force of heavy haul coal trains, and the nature of the train payloads, including sub-bituminous coal and hazardous materials.

Because the City of Brookings is literally bisected west-northwest to east-southeast by the DM&E line, many of its residents must cross the railroad tracks two or more times daily on their way to work, to shop and to reach other destinations. Even visitors to the city must frequently cross the track in getting to and from places within Brookings. Many Brookings homes lie within one block of the railroad track. In fact, the railroad right-of-way (ROW) through Brookings is only 100 feet wide (50 feet on either side of the center of the track), with the result that many residential properties abutting the ROW have houses within 100 feet of the track itself. Many people who bought homes near the track are understandably alarmed at the prospect of heavy haul coal trains and hazardous materials speeding by so close to their homes. The poor safety record of the current railroad operator and the condition of the track through Brookings do little to reassure people who live in trackside neighborhoods.

B. Emergency Services Access

Brookings has six routes that cross the DM&E track: Western Avenue, Main Avenue, 6th Avenue, Medary Avenue, 17th Avenue, and 22nd Avenue. Only the 6th Avenue crossing is grade separated; the separation consists of a flood prone underpass that goes beneath a 2-track bridge. The other crossings are all at grade level and are protected with flashing light and clanging bell signals.

Ambulance service is available only from the Brookings Hospital located several blocks north of the 22nd Avenue crossing. Most of the population of Brookings is now south of the DM&E track. Currently, a DM&E train approaching Brookings can be alerted by the city's emergency services of the need to have crossing access in an emergency situation. In essence, an approaching train can actually be advised to stop in order to keep crossings open during an emergency response.

With the present day level of 3-4 trains passing through Brookings, this scenario has rarely occurred. There is concern, however, that longer, heavier and faster trains would not be stoppable in time to allow emergency vehicles to cross the tracks. The length of coal trains, for example, is often up to 1.5 miles, and is nearly enough to block all at-grade crossings within the city of Brookings at once. Moreover, the 34 coal trains per day projected in the DM&E coal train project would block each crossing for at least 1.7 hours daily, thus greatly increasing the chances that ambulance service, in particular, could be delayed by a passing train.

As Dr. Alan Young, a cardiac arrest victim, stated in his letter to our committee, "... I have found that the survival of out-of-hospital cardiac arrests is inversely proportional to the time it takes for EMTs to arrive, averaging 2-5% in large urban centers and as high as 30% in smaller places like Brookings. This is relevant to the DM&E plan simply because all discussion that I have seen publicly has involved the need for appropriate 'safety gates' for the crossings, with no discussion of a bypass or overpasses or underpasses to circumvent train traffic. However, given the number of trains proposed per day, it is not difficult to envision a scenario when an emergency vehicle will be required to cross town to the single underpass we have in order to respond-such a delay would likely have resulted in my death." Clearly, it cannot be assumed that emergency ambulance services would be reliable south of the DM&E tracks if train traffic attains projected levels.

Except for multi-alarm fires, fire protection on both sides of the track is not as serious a problem. A fire station is located on each side of the DM&E corridor enabling fire trucks to respond to alarms on either side of the track. It is conceivable, however, that train traffic could detain volunteer firemen trying to respond to an alarm on the opposite side of the track.

C. Signal and Train Control

The five grade crossings in Brookings are now protected by flashing light and bell signals. The STB decision on the DM&E project requires no crossing protection upgrades in Brookings until coal traffic volume reaches 50 million tons of coal per year. The only crossing upgrades required at that level would occur at the Main Avenue and 22nd Avenue crossing where gates would be added to existing light signals. There is real concern that crossing protection levels under the STB plan are inadequate. While the voter-rejected City Council agreement (CPA) with the DM&E would have afforded crossing protection superior to that required by the STB, stipulations were such that there was no certainty that DM&E would need to cover any of the expense for the quad gate and whistle free technology (estimated to cost \$135,000 to \$250,000 per crossing) proposed for the five grade crossings in Brookings.

D. Track & Structures

The DM&E track in Brookings is very old and worn with some segments approaching 100 years in age. While new continuous welded rail (CWR) has been laid on the DM&E line in some parts of eastern South Dakota, e.g., between Volga and Huron, no old track has been replaced on the route through Brookings. Integrity of the track in Brookings is thus a safety concern, especially with increased shipping of ethanol and other hazardous materials. CWR would represent an improvement to safety and

train noise abatement in Brookings, but CWR would not eliminate accidents caused by human error or other failures.

Another safety concern is the railroad bridge that spans the 6th Avenue underpass. The STB failed to even mention the bridge and underpass in the FEIS prepared for the DM&E Powder River Basin Coal project. Is the current bridge adequate to handle coal train traffic, or will it need to be replaced with a sturdier bridge? Or, for that matter, will the 6th Avenue underpass be retained or discontinued if the DM&E coal train project is built? These are questions the City of Brookings needs to have answered in order to plan for mitigation if the current alignment is used for the project.

E. Train Speed

DM&E trains reportedly travel at speeds of 10-15 mph when passing through Brookings today. Should the Powder River Basic Project become a reality, train speeds will increase to 45-49 mph and loaded coal trains will weigh around 20,000 tons (although 26,000-ton trains are predicted for the future). The velocity and mass of modern coal trains translate into a huge increase in the potential for physical damage in the event of a train collision or derailment. Consequently, train speed is another issue affecting public safety.

Reducing train speeds through Brookings and other trackside communities would certainly reduce the likelihood of crossing accidents or derailments, but whether state or local governments can regulate train speeds in cities is currently being tested in the courts (See Attachment 3: Orr, MN vs. Canadian National RR). Federal legislation imposing greater controls on train traffic has also been proposed but is a long way from being passed. *Without any outside controls, there is no indication that the speed of trains through Brookings would be reduced without legal action on the part of the City.* In fact, efficiency of the proposed DM&E system dictates constant train speeds of 45 mph for eastbound loaded trains and 49 mph for westbound empty trains in order to insure proper timing of trains bypassing each other at regularly spaced sidings along the line. Whoever operates coal train traffic on the DM&E line could have total control over train speed (within limits established by the FRA) under current regulations.

F. Derailments and Hazardous Materials

Testimony to the BRSC by Ardell Brede, Mayor of Rochester, and Tom Smith, Mayo Clinic Director of Emergency Preparedness, emphasized the potential dangers posed by train derailments and spillages. Hazardous materials make derailments especially dangerous to Mayo Clinic patients and personnel, because they are unable to evacuate quickly in the event of an accident involving the release of hazardous materials. Anhydrous

ammonia and chlorine gas are of special concern as they are toxic gases hauled in pressurized tanker cars. Rupture of a tanker car containing ammonia or chlorine could quickly kill many people downwind of an accident. Rochester and Mayo Clinic have been unsuccessful in negotiating with DM&E to alleviate the potential of derailment and hazardous material releases in downtown Rochester. They remain concerned about DM&E's poor safety record and their disingenuousness in negotiating safety issues. Many Brookings residents share the same concerns about derailments involving hazardous materials.

Derailment has become an even more relevant issue as the ethanol industry has expanded along the DM&E route. The danger in ethanol is in its flammability and toxicity, particularly because it is shipped with 10% gasoline added. Ethanol now makes up the greatest volume of hazardous material shipped on the DM&E line. To quote DM&E's CEO Schieffer from a pre CPA election letter to Brookings voters, "The numbers of ethanol cars moving through Brookings County alone has grown from 188 cars in 2002 to 4,500 cars in 2006—a 2,300 percent increase in hazardous materials in four years, with much more growth expected in the future."

DM&E's accident record involving ethanol is worrisome. The FRA reports that DM&E derailments at New Albin, Lawler, and Heinz, Iowa, and at Balaton and Courtland, Minnesota, have spilled more than 135,200 gallons of ethanol. The Iowa accidents occurred at speeds of 30 mph, 29 mph, and 40 mph resulting in derailment of 61 rail cars and a locomotive.

The Balaton derailment occurred on July 27, 2004, and involved a DM&E locomotive and 14 cars that derailed at 30 mph. DM&E reported to the FRA that "The two hazardous cars that leaked contained alcohol and leaked a total of 15,000 gallons." However, the Minnesota Pollution Control Agency which was in charge of clean-up reported spillage of 60,000 gallons of ethanol from three tank cars, 31,000 gallons of soybean oil from other ruptured tankers, and they noted that six other derailed cars were each carrying 30,000 gallons of flammable fuel. Around 100 local residents were evacuated. Local utility workers had to build a dike to keep the fluids from entering nearby Lake Yankton, over 2,100 cubic yards of contaminated soil had to be removed, and Balaton's back-up well was placed under long-term monitoring for contamination.

On November 22, 2006, seven cars of an ethanol unit train traveling at 24 mph derailed near Courtland, Minnesota. All seven cars spilled ethanol and 12 local residents were evacuated. The Minnesota Pollution Control Agency said that 30,000 gallons of ethanol were released, but DM&E reported the volume at 24,877 gallons. All but one of the 66 cars on the train contained ethanol. Trains carrying ethanol routinely carry one empty car between the locomotives and the ethanol cars to protect the crew in the

event of an accident

As the volume of ethanol transported along the DM&E line increases, the possibility for a disastrous accident also increases. Plans for biodiesel plants to be developed at the soybean plant in Volga, the corn ethanol plant in Aurora, and at other locations, make biodiesel yet another flammable product that will add to the hazmat volume on the DM&E line. The likelihood of a disastrous accident would increase further should such traffic become intermixed with heavy coal traffic.

The possibility of other hazardous materials being shipped on the DM&E line is also a cause for concern. Among materials that could be shipped through Brookings by rail in the future are radioactive waste, medical waste, and other toxic materials. Citizens are generally unaware of hazardous materials being transported through their community by train, but an accident could reveal the true dangers posed by those materials.

DM&E's accident record with ethanol and their propensity for underreporting impacts needs to be taken into account in any negotiated railroad safety plan. The potential for accidents involving hazardous cargoes needs to be weighed in developing a railroad safety plan for Brookings.

G. Pollution

Pollution is anything discharged into soil, water or air that is harmful or disruptive to the environment. This would include not only substances emitted into the environment, but also recurrent loud noise that disturbs people or that can even impair hearing with repeated exposures. Because pollution is such an all-encompassing term, several specific impacts of current and future rail traffic are addressed under this heading.

1. Sound, noise, and vibration. Appendix B of the 1998 Mayor's *Ad Hoc* Committee report dealt with these issues. Subcommittee A studied noise and sound impacts by taking sound measurements along an active coal train route near Valley City, ND. They found that coal train noise (exclusive of the horn) in a typical trackside residence in a city such as Brookings would exceed OSHA standards and, in fact, would require protective gear if experienced in a workplace. While DM&E has emphasized noise reduction due to continuous welded rail (which lacks joints), the sound produced by larger locomotives pulling much heavier loads would exceed that of current train traffic in both intensity and frequency. Ground-transmitted vibration, which is accentuated and carries further during winter months when soil is frozen, is also likely to increase due the much heavier payloads of unit coal trains compared to current DM&E trains. [A typical coal train coming from the Powder River Basin weighs around 20,000 tons.] Noise and vibration would

obviously diminish with distance from the track, but it would be noticeable for blocks away.

Whistle free crossings have been developed in some communities around the country to eliminate the loud train horn sounded as trains approach crossings, however, whistle free crossings require passage of a local ordinance, authorization by the FRA, and financing by local taxpayers. Even if whistle free crossings were to be adopted for Brookings, the level of rail traffic forecast in the DM&E proposal would still produce other train noise and vibration well in excess of current levels. The nature and frequency of this disturbance would detract greatly from the livability of central Brookings.

2. Locomotive exhaust. Diesel exhaust contains 20 to 100 times the particulate matter of that produced by combusting gasoline. Diesel soot particles are easily respired and deposited in lung tissue. The particles include polynuclear aromatic hydrocarbons which are known carcinogens. Consequently, the EPA is adopting increasingly stringent guidelines to control diesel pollution from train locomotives and other sources. However, the FRA decision on the PRB project stipulates that the railroad must use new locomotives with less pollution from Huron west, while effectively mandating that engines with much higher emission levels will run through Brookings and eastward. So the increased volume of train traffic through Brookings will expose residents, especially those in trackside neighborhoods, to much higher levels of carcinogenic diesel exhaust over longer periods of time.

H. Coal Dust

Although little, if any, coal is currently shipped through Brookings, the current railroad has gone on record as insisting that hauling coal is the primary goal of the company. Dust from coal trains is a serious concern. Anyone who believes coal dust is not a real problem needs only to consider why there have been so many attempts to suppress the coal dust escaping from trains. Open coal cars enable coal fines (minute particles) to be blown away in shipment. Coal fines are minute dust particles (0.5mm or smaller). Dust smaller than 1 mm in size is respirable and can be breathed into our bodies. These minute particles can cause black lung disease and other serious health problems for the people and animals that inhale them. Coal dust is also dirty, oily, and creates problems for homeowners in affected areas. Problems include: dirty exteriors and windows for homes and cars; dust and grease entering homes through doors and windows; and occasional wind generated localized coal dust blackouts. There is considerable fear among the Brookings population that coal dust will degrade the local environment and pose health threats to human life.

I. Railroad Compliance with Safety Standards

The Federal Railroad Administration is responsible for railroad safety inspections relative to six safety disciplines. They are: Hazardous Materials; Motive Power and Equipment; Operating Practices (including Drug and Alcohol); Signal and Train Control, and Track and Structures. The FRA safety inspectors and state safety inspectors monitor railroad compliance with mandated safety standards and also manage a substantial regulatory agenda. While this should alleviate any safety concerns for Brookings, it does not. For South Dakota, federal safety inspectors operate out of headquarters in Vancouver, Washington. Equally discouraging is the fact that South Dakota is one of only 18 states in the nation without state safety inspectors. We do, however, utilize inspectors from North Dakota for some inspections.

2. Community Lifestyle Safety Concerns

A. Effects on Daily Life and Lifestyle

The 1998 Report of the Brookings Mayor's Ad Hoc Committee on the DM&E Railroad Proposal provides extensive information on the effect of railroad traffic through Brookings on the daily life of the community. However, since that report was written, the community of Brookings has changed. The city's only Middle School is now located south of the tracks which results in increased traffic from families living north of the rail line. And, Brookings has grown to the south with almost 800 new residences from 8th Street South to 20th Street South and beyond constructed since 1998.

The presence of the railroad has also become more noticeable. Although the proposed coal train expansion with its 34 trains a day has not been realized, train traffic has increased. And, the materials that the railroad routinely carries have changed. The most important change has been in the transportation of ethanol. As cited earlier, in a November 5 *Speak Out* column in the *Brookings Register*, Kevin Schieffer, DM&E's CEO said: "The numbers of ethanol cars moving through Brookings County alone has grown from 188 cars in 2002 to 4,500 cars in 2006 a 2,300 percent increase in hazardous materials in four years, with much more growth expected in the future."

B. Community Health

In addition to the negative consequences of inner-city train traffic noted in the previous Community Environmental Safety Concerns section of this report, there are other health concerns. The change in Brookings' demography and the increased train traffic has already raised several issues. With more and lengthier trains running through Brookings at peak times of the day, people are already finding the experience of crossing the

tracks challenging, dangerous, and frustrating. Drivers, pedestrians, and people on bikes lose patience waiting for trains to arrive at crossings. Unfortunately, they cross when they should not. Near misses have been observed, and at least one accident involving three teens has occurred at the 22nd Avenue crossing

When and if the 34 coal trains a day come, the city will be divided in half for up to 1.7 hours a day. During that time, the people of Brookings will be denied access to virtually all the community's infrastructure, health and safety services, schools, shopping, work, etc., on the opposite side of the track. It is comparable to building a temporary wall through the community. How can that not have major negative effects on the daily lives of the people of Brookings? As an example, during emergencies, fire engines, police, or ambulances could sit at a crossing for 3 or 4 minutes when a train is coming through town. During that wait, a house fire could burn out of control, or a heart attack victim die.

C. Community Safety Standards and Requirements

It is important that the community of Brookings respond to the railroad issue in a proactive manner. It should not wait for the railroad to initiate measures that will protect our community and its citizens. Even before issues such as grade separations (bypasses, grade depression, underpasses, and overpasses) are determined, the city must establish and implement a safety plan for railroad travel through the city, have plans in place to respond to possible accidents, and it must acquaint the citizenry of those plans.

1. **Placing limits on train travel through Brookings:** A recent federal court ruling (see Attachment 3) would seem to indicate that communities do have the right to set speed limits on railroads. For community safety, Brookings should establish speed limits on trains through the city. It should also limit the length of time that a train can block an intersection.
2. **Community Safety Education:** The city has no formal plan to inform residents of what they should do in the case of a derailment or spillage involving a hazardous material. Although the fire and police departments have procedures in place to respond to crises, there must be more education in this area. The greatest threat to the community is not the occasional accident that involves a train/car collision; it is an accident involving hazardous materials. The city must develop strategies to acquaint all citizens, but most particularly those who live within 5 blocks of the railroad tracks, of the procedures that they should follow if such an accident occurs.

3. **Trespasser Prevention Programs:** The shocking and only fatal railroad accident that has occurred in the City of Brookings over the last 10 years resulted from the actions of someone who trespassed onto railroad property. In addition to providing safer railroad crossings and more safety information to Brookings citizens, the city must investigate what other communities have done or are doing to prevent trespassers from compromising either the railroad tracks or the trains themselves.
4. **Drugs and Alcohol:** There is a relationship between accidents of any kind and the presence of alcohol and/or drugs. There is little that the community can do to prevent railroad accidents that involve controlled substances. However, the community can explore the possibility of punishing people involved in accidents where drugs or alcohol are present with a more severe sentence.
5. **Human Error:** It is almost impossible to enact measures that will completely prevent railroad accidents that are caused by human error. Many railroad accidents result from people being distracted, careless or simply not seeing signs that are clearly visible. The importance of human error in community safety would seem to argue for relocating the existing rail line to a location where fewer people will be crossing the tracks each day.

D. Economic Impacts

1. **Real Estate Values and Taxes:** Despite anecdotal evidence that some people selling trackside homes have had to lower their prices, the increased traffic on the rail line has not had a serious impact on real estate prices at this point. However, this will not hold true if the number of trains continues to grow as it has in recent years. And, as real estate values fall, so will the taxes the city receives from trackside and adjacent properties. The effect that increased rail traffic could have on property values has prompted the board of the East Central Realtors Association to address the issue. A statement from the Association is pending.
2. **Zoning and Liability:** The current rail line runs through several areas of Brookings. Some of those areas are classified as industrial and/or commercial. As such, the presence of a railroad does not constitute a significant problem. (An exception to this might be the downtown area of Brookings which is on the National Register of Historic Places.) However, from Main Avenue to 22nd Avenue, there is a large area that was zoned as residential in the 1960s. Although the designation of this area as residential occurred at a time when the rail line was expected to be abandoned, the City of Brookings has not acted in such a way as to protect the people who built houses on or

near the railroad tracks with every expectation that the value of their homes would not be impacted by an industrial development in a residential neighborhood. People who built or purchased houses in this residential area might be able to sue the city for its failure to protect their property values, safety, and health.

3. Brookings Today

Over the last decade, the community of Brookings has changed significantly. Many of the community related factors considered in the original DM&E, Environmental Protection Agency, Corps of Engineers, Federal Railroad Administration, Surface Transportation Board documents and decisions have changed dramatically in the last ten years. The City of Brookings is increasingly physically divided by the railroad. At the same time the railroad seeks change, the city is also changing. Brookings is growing rapidly with more people, new homes, new industries, new jobs, new schools, new shopping, a rapidly growing university, increased traffic, and more safety concerns.

In defense of imposing their will on the people of Brookings, the current railroad and many of its supporters like to argue that the railroad was here first. That is true, the railroad was here first. Originally the railroad was the vital lifeline of the community. Historically that changed. In the Midwest, by 1960 the railroad had discontinued or was discontinuing passenger service over most of its route. Over time, freight shipments dropped to dramatically low levels. In 1968, the Chicago Northwestern Railroad began wholesale abandonment of much of its Midwest track. Traffic decreased so much that by 1970, the Chicago Northwestern Railroad was only running one or two trains a day through Brookings. The railroad was even publicly talking of going out of business, selling off its rolling stock, and taking up the track and selling it as scrap.

At that same time, Brookings was growing rapidly. Brookings grew from 10,558 people in 1960 to 13,717 in 1970. This almost 30% increase was reflected in increased development south of the railroad tracks. Over the years, development continued. By 2000 Brookings reached a population of 18,504 people. Today with the addition hundreds of new homes, Brookings is well on its way to a population of 20,000 people. During all that time, neither city government nor the railroad raised any concerns regarding potential impacts of residential developments south of the track

Some people blame the City for allowing residential development along the then dying rail line. Others blame the DM&E for not addressing safety issues of the people when they developed their coal train expansion plan. Still others blame the people of Brookings for buying homes in certain neighborhoods. In reality all could assume some blame. However, blame is not the answer. The solution to the situation rests with the government and the railroad recognizing the dangerous safety environment that exists in Brookings and finding a safety solution that protects the well being of the citizens. Federal, state, and local governments recognized the dangers of high speed vehicular

traffic on the nation's highways. They solved many of the safety and transportation problems and eliminated numerous dangers by building separate high speed highways and highway bypasses. Today they have further expanded protection and the safety of their citizens by establishing Hazmat routes around cities and security zones.

Over the last decade, changes in Brookings have been numerous. The following four examples provide a quick insight into some of the changes. The four examples are: housing, voting, traffic, and employment

Residential housing expansion in Brookings has changed in the last ten years. Virtually all new housing in the last decade has been constructed south of the railroad tracks. As the following table (Table 1) shows, since 1998, a total of 733 of the 734 building permits issued for new single family homes were for units constructed south of the track. At the same time, SDSU's enrollment growth of several thousand students has occurred north of the track. With SDSU faculty residing increasingly in homes south of the track and the university growing north of the track, the presence of the railroad becomes a concern for the SDSU campus.

Table 1
New Single Family Building Permits Issued
in the City of Brookings, 1998-2007
(Includes the 3-mile area)

Year	Permits Issued	Permits Issued for Homes South of the Rail Line	
1998	64	63	98%
1999	46	46	100%
2000	40	40	100%
2001	56	56	100%
2002	77	77	100%
2003	51	51	100%
2004	104	104	100%
2005	126	126	100%
2006	130	130	100%
2007*	40	40	100%
Grand Total	734	733	99.8%

Brookings voter registration changes also reflect the impact of the new housing expansion south of the tracks. In recent history the number of voters in Precinct 5 has grown significantly and Precinct 6 had to be added (in 2002) to handle the on going rapid population growth south of the tracks (Table 2). Today, the number of registered voters in Brookings is almost equally divided by the railroad with an estimated 52% (5962 voters) north of the track and 48% (5473 voters) on its south. Considering that most of the new homes have been built by families with children, it is quite likely that there are as many or more residents south of the track than north.

Table 2
Brookings Registered Voters
(April 10, 2007)

Precinct Number	Number of Registered Voters North or South of the Rail Line
Precinct 1	1391 North
Precinct 2	1591 North
Precinct 3	1690 Divided*
Precinct 4	2135 North
Precinct 5	2793 South
Precinct 6	1835 South
Total	11435

*If Precinct 3 voters are divided equally between those who live north and south of the rail line (i.e., 845 voters for each side), Brookings voters would seem to be almost equally divided

The changes in traffic counts (the number of cars that cross a particular point in a given period) within the City of Brookings reflect not only the growth of the community but also substantial increases in the number of people crossing the railroad track (Table 3). The increases, ranging from 33% to 61% in only a 4-year period, are substantial and reflect an increased potential for car-train problems and safety issues. If the 22nd Avenue crossing falls into that range (data not available), the traffic at that crossing would increase to somewhere between 16,895 to 20,452 vehicles a day.

Table 3
Average Daily Traffic Counts (ADT) at Rail Crossings: A Comparison

Avenue	2001 Final Environmental Impact Study (FEIS)*	2005 Brookings Traffic Count Map	Percent of Increase
22 nd Avenue	12,703	**	**
17 th Avenue	3,025	4,870	61%
Medary Avenue	6,440	8,565	33%
Main Avenue	7,988	11,290	41%
Western Avenue	2,630	4,235	61%

*The Final Environmental Impact Study was published in 2001 **No data is available for 22nd Avenue in the 2005 Brookings Traffic Count report.

Employment opportunities in Brookings are truly excellent. Unemployment consistently ranges within the 1% to 2% level. However, commuting to work creates traffic; and increased traffic increases the potential for accidents. While residential expansion has been south of the track, major employment opportunities are located north of the tracks (Table 4). The result is literally thousands of people crossing the tracks at least twice a day five days a week during their journey to work. Of the six largest employers in the community, four are located north of the tracks and two to the south. About 79% of the employees of the major employers work north of the rail line. In reality, it doesn't matter

exactly where people live, a large majority of the daily commutes to work, shop and to go to school) will require crossing the track.

Table 4
Brookings Six Major Employers*

Name of Employer	Number of Employees	North or South of the Rail Line
South Dakota State University	1700	North
Daktronics	1600	North
3M	775	South
Larson Manufacturing	600	North
Brookings High School	335	South
Rainbow Play Systems	327	North

* From a 2006-2007 City of Brookings telephone survey

F. COMMUNITY RIGHTS & RAILROADS

The City of Brookings operates under a home rule charter; thus, ordinarily, the City Council possesses legal authority to adopt any ordinance to promote the health, safety or welfare of the local citizenry unless otherwise prohibited by state statutory or constitutional provisions. However, the city legal authority to regulate railroads passing through the city in order to promote the health, safety or welfare of the local citizenry is further limited by the doctrine of federal preemption in the regulation of railroads.

State and local governments are not totally powerless to regulate railroads but, in each case, a federal court must decide whether: (1) the activity to be regulated is one that addresses a dominant national interest in the efficient operation of railroads as an instrument of interstate commerce or, (2) if the national government has occupied that field of railroad operation to the total exclusion of local or state regulation or, finally, (3) if enforcement of local or state regulations would interfere with enforcement of existing federal railroad regulations. If any one of the considerations above is answered in the affirmative, state or local railroad regulations would be superseded by federal regulations. Particularly important are the Congressional statutes pertaining to railroads including the authorizing legislation for the Federal Railroad Administration (FRA) and Surface Transportation Board (STB) and the large body of rules that have been promulgated or adjudicated by those federal bodies.

Even in the absence of conflicting federal statutory or regulatory railroad laws, state and local governments might be restricted in their power to regulate railroads by the perplexing dormant commerce power doctrine (exclusive power of the US Congress). In brief, state and local government legal authority to regulate the operation of railroads is severely but not totally restricted. For example, in a recent ruling regarding train speed through Orr, Minnesota, a federal judge ruled that the state of Minnesota has the right to set speed limits despite the Canadian National Railroads claims to the contrary. In reality, since Brookings and the railroad may both be affected by legal decisions, it is

important that they work together to solve problems and protect the people of the community.

G. COMMITTEE OVERVIEW

The community of Brookings has serious concerns with rail traffic through the city. The city has changed in recent years and the rail line currently divides the community in half. Traffic over the railroad tracks has also increased within the last five years.

Although no one wants the current and potential railroad traffic issues to affect anyone in Brookings County, it is clear that a bypass around Brookings would solve many of the inner-city traffic problems. Average Daily Traffic Counts (ADT) on Medary Avenue where it intersects with the Highway 14 bypass show only 2200 southbound cars and 4225 northbound cars. Although these numbers are not insignificant, they do not compare to the traffic counts on the streets within Brookings that cross the tracks.

It is important that the city administration, the railroad and those federal agencies that regulate rail traffic endorse a bypass around Brookings. The time for posturing and intransigence has passed. It is time to face reality and to move on. Railroad bypasses like highway bypasses protect the safety and health of city residents and increased speed and economic benefits for traffic.

H. SOLUTIONS

The possible solutions to Brookings railroad issues have not really changed dramatically since the 1998 *Report of the Mayor's Ad Hoc Committee on the DM&E Rail Proposal*. What is needed is greater cooperation on the part of the railroad. Working together to achieve a positive outcome (a "win-win" situation) is really not an insurmountable task. Unfortunately, historically, the parties involved in attaining a true solution have not worked together. The following brief overview is intended to provide a picture of what has happened over the years. It is not meant as a criticism of anyone but rather an overview that leads to a point of departure from which to move forward.

1. A Historic Overview

During the last 10 years, the DM&E has demonstrated that it does not want to assume any additional costs. Nor does it want to deal with more land owners, additional track, or seeking governmental approvals required by any changes. It has also demonstrated that it is not willing to even talk about a bypass or other solution to Brookings' concerns. However, recently it was willing to discuss a bypass option with Pierre; it did extensive work to explore a possible bypass around Mankato, and is now even talking about how it might bypass Rochester by taking a different route through Austin, Minnesota. Why not Brookings?

Brookings, on the other hand, has indicated that does not want 34 coal trains a day running through the heart of the city. Historically, city government has endorsed the

bypass concept. The Lawrence and Schiller survey that was appended to the 1998 report of the Brookings Mayor's Ad Hoc Committee showed that 61.1% of Brookings residents favored a bypass. However, 49.7% opposed any city funding for a bypass, a concern that was clearly reflected in the 2001 vote on the bypass issue.

Former Governor William J. Janklow tried to achieve a solution with state involvement and resources. He developed a bypass plan that utilized a large amount of state-owned land, impacted relatively few rural residences, and even included an underpass at I-29 and an overpass on East Highway 14. It also included significant funding. Unfortunately, the railroad was again unwilling to explore that bypass option.

More recently the City again tried to raise the bypass issue when developing a Community Partnership Agreement (CPA) with the railroad. The DM&E refused to even discuss it. City government went ahead and developed a CPA that did not mention a bypass as an option. The citizens of Brookings clearly indicated that the CPA was unacceptable when the agreement was referred and rejected by a vote of the people. One of the reasons cited by opponents of the CPA was that it did not adequately protect the community.

Although the possible solutions to Brookings railroad safety issue have not changed a great deal since 1998, the need for all parties to work together has increased. The demographic changes in Brookings have made a satisfactory solution more urgent. And, unfortunately, the rhetoric engendered by the vote on the Community Partnership Agreement may have exacerbated tensions.

One of the most unfortunate consequences of the debate that occurred over the CPA was that it seemed to pit people who lived within the Brookings city limits against the *agricultural sector of the state*. The dissension was fed by many false claims by professional spin doctors, and the DM&E seemed intent on doing all in its power to foment this discord rather than to resolve it. After the CPA was defeated, some people who had supported it admitted that they could understand why others had opposed it. However, the DM&E seemed to take the defeat as a personal insult.

Added to the community's concerns is the fact that South Dakota's leading political figures have shown no interest in bringing the two sides together. They have ignored requests for assistance in exploring and resolving this matter and were decidedly disinterested in discussing this issue with the BRSC. This contrasts sharply with the attitude of those who represent Rochester, Minnesota. Despite the fact that the Minnesota congressmen also have constituents in the agricultural sector, they have insisted that there can be no railroad expansion unless communities are also protected.

2. Good Neighbors - Finding the Solution

All the people of Brookings are asking for is a safe place to live. Over the years, they have consistently taken steps to make their community a safe, secure, healthy, nurturing

community. They have consistently rejected any industrial expansions that could negatively impact those factors. By protecting the safety and health of the community, Brookings grew into a community loved by its residents, admired by others, and welcoming to all people.

The people of Brookings seek a common sense and equitable solution to their concerns. They ask that the railroad, city, state and federal government officials, and community leaders come together to truly seek a solution that assures the safety of the people and facilitates the operation of the railroad.

The solution to Brookings' railroad problem must protect the people of the community from the environmental safety concerns identified in this paper. The people know that some of the dangers facing them daily because of the railroad running through the heart of the city include: the derailment of cars carrying chlorine, agricultural chemicals, ethanol and eventually biodiesel fuels, and nuclear waste. They realize that increased speed will increase the risk of accidents. They realize that more trains blocking traffic negatively impacts fire trucks, ambulances, police, and other safety vehicles. At the same time, they do not want the small town neighborhood culture of the community destroyed by overpasses, barrier walls, and almost constant street blockage.

The present railroad does what it wants without regard to the desires of the people of Brookings. Brookings as a community asks the railroad to change its approach and help the people of Brookings maintain their safety and community goals. The railroad has never explained why they do not want to deal with or even discuss a bypass solution for Brookings. Perhaps it is because it already owns the existing track and has STB approvals. Bypasses also present additional legal questions, applications, and additional costs. Unfortunately their posturing remains hard to understand since a bypass solution would require funding by the local, state, and federal governments and not necessarily the railroad. Quite simply, all the people of Brookings seek from the railroad is help in allowing Brookings to achieve its safety, health, and community goals.

3. Alternatives and Expectations

A real safety solution for Brookings depends upon implementing one of two alternatives, a bypass or a covered depressed track. Community safety also demands immediate improvement of gating and lighting standards and an upgrading of the existing underpass.

1. **Bypass:** A bypass around Brookings is seen as the safest choice for the people of Brookings. The dangers of derailments and hazmat spills are greatly reduced in open country. Interestingly, the primary opposition to a bypass came from rural residents along a possible rail route. There has been no opposition to the railroad by county residents who live along the existing track outside of the city limits.

Recognizing that a bypass would impact others, the solution must respect their rights and needs. The solution requires working with people along any bypass route to address their individual concerns.

Land along a bypass route would provide both the community and the railroad access to new economic opportunities. Industrial and economic development expansions could thrive along a newly opened bypass route

The BRSC believes that Brookings, Brookings County, and the State of South Dakota are in unique positions to work with the railroad for a bypass solution. We believe that South Dakotans are concerned about each other and also are willing to listen, understand, and work out solutions

It is hoped that the State of South Dakota would be willing to financially support a bypass in at least a similar manner to Governor Janklow's earlier plan. In a recent letter to the Committee for a Safer Pierre and Fort Pierre, Governor Rounds supported a bypass around Pierre (Attachment 4). Surely he would do no less for Brookings. The State can also assist bypass development in other ways. The Bureau of Railroads could be the primary applicant for a bypass. In the Brookings area, there is a significant amount of state-owned land that could be utilized in routing the bypass. The state with its own rail authority could work to speed the bypass approval process. When the bypass is approved and constructed, the state could lease, sell, or trade the track with the railroad. For the state and city's sake, it is essential the bypass development utilize experienced professionals and key personnel from the South Dakota Bureau of Railroads.

Brookings should also examine the potential benefits that a bypass could provide relative to expansion or relocation plans of the Brookings Airport. The plan to move the runway one-half mile west of its current location would necessitate a relocation of at least a part of the existing rail line.

2. **Depressed Track Alternative:** A depressed track provides a viable alternative solution to a bypass. It would require that the track be depressed from east of Western Avenue eastward through Brookings to I-29. The depressed track would be covered to prevent accidents and unwanted intrusions. The track would pass under Main, 6th Avenue, Medary, 17th, and 22nd Avenues. Obviously, it would also be a costly solution (possibly twice as expensive as a bypass), but it could be accomplished within the existing 50 foot right-of-way on both sides of the track.
3. **Gates & Lights:** Gates and lights are an expected minimum safety standard for all major street/rail crossings within the community. Obviously, if a coal train is running through the city at 50 mph, all track should be fenced, and crossings along the route should be gated and well lit. In the meantime, it is the belief of the BRSC that the crossings at Main Avenue and 22nd Avenue should be gated as soon as possible based on existing use. Even if a bypass is implemented, Main Avenue and 22nd Avenue should continue with gates and lights.
4. **Existing Sixth Avenue Underpass:** The underpass needs immediate upgrading for the safety of the community. For safety's sake the people of Brookings should be

assured that emergency and safety services have excellent access to both sides of the community. The present structure could be widened, deepened slightly, and connected to a flood triggered pump, to assure usage for emergency vehicles needing to get from one side of the town to the other. Community safety requires immediate action relative to the drainage problem. The people of Brookings have shared, with BRSC members, a very strong opposition to any overpass within the city.

The Brookings Railroad Safety Committee asks that the City of Brookings provide the leadership necessary to bring about a solution acceptable to the people of Brookings. The solution requires the involvement and support of the Governor's Office, the State of South Dakota, Congressional Officials, the Federal Government, and the railroad. We ask that the first step towards a solution that protects the people of Brookings be an invitation from the City to these various entities to participate in a public process to attain a solution.

I. FUNDING SOLUTIONS

Any safety solution is going to require money. Funding requirements will vary depending upon the agreed solution and those who partner in financing the solution. Potentially, these partners include the railroad, local, state and federal government agencies, and community organizations.

1. City of Brookings

The City of Brookings collects a second penny sales tax in to support of *infrastructures deemed important to the future of Brookings*. A bypass or covered depressed track certainly meets the criteria utilized to enact that tax. Brookings local government can also go to the people to seek additional temporary taxation to provide them the safety, solutions, and nurturing community they want and expect. The recent vote on the CPA indicates that today the people are willing to do more to protect their safety. In recent years, the city has also set aside funds to address upgrade needs at existing crossings. These funds, while relatively small, can also be utilized to achieve the agreed mitigation.

2. The Railroad

In the DM&E expansion plan, the railroad lists funds to upgrade existing track through Brookings as a part of their plan. These funds could potentially be utilized instead to pay for part of a bypass or covered depressed track. Several years ago, the president of the DM&E stated that they could address any expense if they believed it was in the best interest of the corporation. We would suggest that a positive solution to safety concerns would be in the best interest of the railroad.

3. Brookings County & the State of South Dakota

At one time, the DM&E estimated that it would pay \$1 million a year property taxes to every county along its route including Brookings County. Such increased taxes could be utilized, on a temporary basis, to fund a bypass or covered depressed track, and upgraded rural crossings. We suggest that our local government and state legislators take a serious look at enacting a temporary program that would fund part or all of the mitigation. The utilization of collected taxes for solving a problem is not new to South Dakota. It has been utilized before to fund solutions to the state railroad issues, highways, and economic development.

The State of South Dakota at one time asked the people of South Dakota to pay a temporary one-cent sales tax in order to prevent track abandonment through the purchase of rail lines. That creative process solved the needs of communities along the affected routes. South Dakotans worked together and utilized a temporary tax in order to protect their neighbors and the state. It was a masterful solution to the problem. A similar solution could potentially be used for Brookings and other trackside communities, like Pierre, that have expressed concerns about the railroad.

4. The Federal Government

The Federal government provides access to additional funding for mitigation. Members of the US Senate and House of Representatives have opportunities to assist communities such as Brookings obtain federal funding. Recently, for example, our two US Senators helped obtain \$40 million to relocate the railroad in downtown Sioux Falls. Certainly they would be happy to help provide a solution to an issue that not only addresses the safety and wishes of the Brookings community but also supports economic development of the state.

5. Others

Finally, there are people and organizations in the community and nation who are concerned with safety, health, and other quality of life issues. They also have the potential to support projects that conform to our community goals. They should not be overlooked in any funding process.

J. ESTABLISH THE BROOKINGS COMMUNITY RAIL AUTHORITY

The Brookings Railroad Safety Committee recommends that the Brookings City Council establish the Brookings Community Rail Authority to protect and facilitate the safety of the people of the community and to promote the effective use of rail transportation to protect essential rail service to the community and region. The BCRA would be the community's voice to the City Council in all matters dealing with the rail carrier(s) operating in the community.

As envisioned, the Brookings Community Rail Authority would perform a number of functions.

- 1 Utilizing the BRSC Report and in collaboration with city, state, federal, rail carrier(s) and other offices, immediately develop a comprehensive community rail plan for Brookings
2. Immediately and in concert with other governmental units and the rail carrier(s) develop and construct a bypass around the City of Brookings for the safety and well being of the people.
3. On an ongoing basis, identify and address community safety concerns and develop plans that protect the people of Brookings from derailments, hazardous materials, accidents, and other rail related safety issues.
- 4 Work in collaboration with the railroad(s) to develop plans and public awareness of railroad related safety, service, and economic objectives
5. Foster rail service in Brookings and the region to enhance economic development through the improvement and expansion of the railroad infrastructure.
6. With the development of a bypass, offer the railroad the opportunity to sell the track through town to the city. If that occurs, then develop a short line operation, to preserve essential rail service to local industries through the ownership and operation of a Brookings Branch Railroad.
7. "Rail-bank" any abandoned rail lines in the community so that they may be used in the future if conditions make it economically feasible. In the meantime use banked lines as trails for public recreation.
8. Participate in Operation Lifesaver, a non-profit nationwide information program committed to eliminating collisions, injuries and fatalities at railroad rights-of-way and highway crossings.

The Brookings Railroad Safety Committee suggests that the Brookings City Council establish the Brookings Community Rail Authority (BCRA). This group would be representative of the industrial, economic, residential, social, political, safety, and health concerns of the community. The Brookings Community Rail Authority might consist of up to 9 Brookings city residents. The 9 individuals invited to serve on the rail authority should represent a cross section of the community. Individuals on the BCRA might include: a representative from the major rail users, a representative from the local manufacturers, a representative of the Brookings financial community, a homeowner residing within two blocks of the track, a member of the Brookings City Council, a representative from South Dakota State University, a local member of the South Dakota Legislature, and two at-large Brookings residents selected by the Mayor.

The exact composition of the Brookings Community Rail Authority would of course be determined by the Mayor and City Council, and invitations to serve would also come through the Mayor. Liaisons from the Governor's Office and our elected federal officials might also be invited to participate with the committee as non-voting members. The railroad(s) would be invited to send a representative to BCRA meetings.

K. RECOMMENDED ACTION TO THE BROOKINGS CITY COUNCIL

As a result of this six month investigation of the rail safety and health needs of the people of the City of Brookings, the Brookings Railroad Safety Committee is pleased to present the following recommendations to the Mayor and City Council in the interest of public safety and related health concerns. The BRSC recommends that, in the interest of protecting the rights and safety of the community, the City of Brookings immediately take the following steps:

1. Adopt the following recommendations as the Interim Brookings Rail Safety Plan.
2. The Mayor shall formally notify all applicable federal government agencies, our Congressional delegation, the Governor of South Dakota and South Dakota Department of Transportation, and the Railroad that the City of Brookings seeks to immediately enter into discussions with the railroad and appropriate agencies intended to lead to the development of a bypass route around Brookings for the safety of the people of Brookings.
3. The City of Brookings shall establish the Brookings Community Rail Authority to protect and facilitate the safety of the people of Brookings and promote effective use of rail services. As its first task, the City shall charge the Brookings Community Rail Authority with developing a formal Brookings Rail Plan for the consideration and approval of the City Council. The Brookings Community Rail Authority will represent the interests of the city and work in concert with the City Manager, City Attorney, Mayor, and City Council in providing guidance and direction for lead negotiators in their interactions with the railroad(s), government agencies, and other safety and/or economic related entities.
4. For the immediate safety of the community, the City of Brookings shall begin the process of gating the two busiest crossings in town namely Main Avenue and 22nd Avenue. The City should also seek to attain "whistle free" status for those two crossings. The City should then charge the new Brookings Community Rail Authority with developing a plan and time line for gating all other grade crossings in the city, installing appropriate fencing along the track, and attaining the designation of "whistle free" crossings .
5. The City shall hire a professional lead negotiator to represent the City of Brookings in railroad related negotiation processes. Ideally this person would be an experienced professional with an established record of negotiating with railroad(s) and government entities. This professional negotiator would be charged with leading all assigned efforts to achieve community goals. The lead negotiator would work under the supervision of the City Manager.
6. The Brookings City Council shall formally designate a Director of

Community Safety. That individual should be assigned the responsibility of developing formal authorized city emergency safety and Hazmat plans, develop formal systematic response plans and programs to respond to disasters in concert with county, state, and federal emergency officials. That individual should also be expected to monitor rail and highway shipments and prepare for emergencies related to the transportation of hazardous materials, fuels, chemicals, and nuclear waste through the community. The Director of Community Safety should also establish a formal Brookings Hazmat team comparable to the level of expertise found in Sioux Falls, Watertown, Aberdeen and Rapid City.

7. The City shall identify, retain, and seek guidance from experienced professional railroad consultants including experts on safety and health, engineering, government programs and finance. From this point forward, the City and Rail Authority need to utilize experienced professional expertise to assist in achieving rail safety related goals, to implement actions, and to achieve desired outcomes.
8. The Mayor, City Manager, and/or City Attorney shall conduct an immediate review of how conditions have changed since the Surface Transportation Board issued its Final Environmental Impact Study and report those changes to the City Council and the Brookings Community Rail Authority. This should include an understanding of potential authorizations and impacts relative to any change in ownership of the railroad. The City shall also assume responsibility for communicating these changes to relevant federal agencies such as the Surface Transportation Board. Such communication shall also ask said agencies to review earlier policies in light of these changes.
9. In the event of a change of ownership of the existing railroad(s), the Brookings Rail Safety Committee recommends that the Mayor invite the new owners and chief administrators to visit Brookings and gain an understanding of the unique safety and health needs of the community and to discuss how both should respond to this situation.
10. The City Attorney shall be supported in his efforts to develop a solid expertise regarding all community, state, federal, and railroad laws related to the rights of communities relative to railroad(s) and mandated laws related to protecting the safety and health of the citizenry. He shall also be required to update the City Council and the Brookings Community Railroad Authority on recent developments in this area.

L. CONCLUSION

Throughout this document the BRSC has focused on the need for collaboration in order to attain mutual success. Collaboration avoids conflict. Successful negotiations come from a balance of power and mutual respect. In negotiating with the railroad(s) and

government entities, the city tends to lack power. While that may appear true, there are also many rights, laws, and regulations that require or mandate that cities protect the safety and health of residents. Brookings need never be afraid of going to court to protect the health and safety interests of its citizens. Little Orr, Minnesota recently provided an example of what a community and state can do to protect its people from excessive train speed. Furthermore one can always question, in court, whether the railroad or Federal Railroad Administration supersede the laws and regulations of the departments such as Homeland Security, Housing and Urban Development, Health and Human Services, and Justice. The rights of the state and city should be pursued, if necessary, through the legal system

The members of the Brookings Railroad Safety Committee wish to thank Mayor Scott Munsterman and the members of the Brookings City Council for the opportunity to serve our wonderful community. We are grateful to the City Manager, City Clerk, and City Engineer and their staffs for their assistance in our efforts. We are also grateful to all the people who shared their time and expertise through testimony, personal contacts, e-mails, etc.

The people of Brookings appreciate the fact that the Mayor and City Council are providing long needed leadership relative to the impacts of the railroad issue and the safety and health of our citizens. At the same time, the people of Brookings want more than the recent Community Partnership Agreement required. The repeal was not intended as a criticism of any single person or action. It reflected the community's desire for an agreement that provided protection and that also distributed the cost of that protection in a fair and equitable manner.

What is also clear is that until recently, the City of Brookings has not taken the positions and actions required to maintain the safety and health of the community relative to railroad matters. It has adopted a stance that has given more power to the railroad that it actually has. The assumptions about what the railroad can and cannot do must be challenged.

The BRSC believes that it is the desire of the people of Brookings that a bypass route be constructed around the city in order to protect their health and safety. That solution is even more essential because we, as a community, face a future of unknowns relative to: (1) railroad ownership and management, (2) elected local leadership, (3) elected state and federal officials, (4) potential derailments, (5) shipments of hazardous materials, (6) transportation of nuclear waste, and even (7) terrorism.

The people of Brookings do not want their community and lifestyle diminished by current or future changes in rail traffic. They want the city and the railroad to work together in a spirit of cooperation to achieve the safety of the people of Brookings and economic goals of the railroad.

This cooperative effort will require compromise. The bypass route should be considered as a benefit to both the community and to the railroad. The safety and health of its

citizens will benefit the community. The bypass would prevent the railroad from a financial disaster caused by a possible in-city derailment. The railroad and city should partner in the decision to create this bypass

The noted economist Milton Friedman said "Fundamentally, there are only two ways of coordinating the economic activities of millions. One is central direction involving the use of coercion - the technique of the army and of the modern totalitarian state. The other is voluntary cooperation of individuals - the technique of the marketplace." The solution to Brookings safety is to be found in voluntary cooperation - the technique of the marketplace.

ATTACHMENT 1

Trains Magazine

DM&E/IC&E bidders winnowed to around 10

Fred W Frailey

June 12 2007

SIOUX FALLS, S.D. - Union Pacific and BNSF Railway - move over. Another railroad is nearer to laying its tracks into Wyoming's Powder River Basin coalfields. Trains has learned that Cedar American Rail Holdings is auctioning some or all of its Dakota, Minnesota & Eastern and Iowa, Chicago & Eastern Railroads to one of about 10 bidders still in the running. Several of those bidding consortiums include other railroads.

DM&E operates a route bought in 1986 from Chicago & Northwestern, from Winona, Minn., west across Minnesota and South Dakota to Rapid City - 649 miles. From there it goes northwest to Colony, Wyo., and south to Crawford, Neb. In all, DM&E runs over 1,103 route miles.

For a decade the railroad has sought to compete with BNSF and UP for coal business in the Powder River Basin. It proposes building a new 260-mile line from Wall, S.D., along the Cheyenne River to Edgemont, S.D., and then west into the coalfields. The last regulatory hurdle was cleared in Feb. 2006, when the Surface Transportation Board gave its final approval.

All that stands in the way is financing. The estimated cost of building the new line and rebuilding the existing DM&E back to Winona is \$2.3 billion to \$2.5 billion. Locomotives and facilities could raise the total spending considerably. A sought-after \$2.5 billion loan from the Federal Railroad Administration - part of the \$35 billion Railroad Rehabilitation Improvement and Financing program authorized by Congress - was denied on Feb. 26, on grounds that the railroad would not be able to repay the loan. (But sources tell Trains that the FRA staff actually recommended approval of the loan, and that the railroad's financial health has improved considerably in the past two years.)

Denied the loan, DM&E's owner, Cedar American Rail Holdings, hired Merrill Lynch and Citigroup to explore other ways to finance the Powder River Basin project. Of some 100 entities approached by the investment bankers, approximately 30 expressed an interest in either buying the railroad or partnering with it in some fashion. All were asked to make proposals.

Trains learned that from those 30 interested bidders, approximately 10 consortiums were invited to hear presentations by Kevin V. Schieffer, president and chief executive officer, during the past two weeks. Three railroad companies are reportedly among the 10 semifinalists: Canadian National, Canadian Pacific, and an unnamed shortline company. Each of the three rail companies is partnering with private equity groups or other deep-pocket entities to avoid the issue of controlling ownership of DM&E. Canadian Pacific's Twin Cities-Chicago main line connects directly with DM&E at Winona. Canadian National connects at Dubuque with the IC&E, a sister railroad to DM&E. The 1,400-mile

IC&E, made up of former Milwaukee Road lines, was brought under the DM&E umbrella in 2002.

Sources tell Trains that the 10 consortiums have until the end of this week to either affirm (or possibly sweeten) their proposals. It's believed that one final round of due diligence and bidding may remain before Cedar American makes a decision. That decision could involve selling all or part of both railroads, selling part or all of DM&E only or part or all of IC&E. "The nice thing about the FRA loan was that it would have enabled Cedar American to keep control of the company," said one insider. "Now that may not be possible. They may have to accept being junior partner."

DM&E and IC&E connect with each other via an IC&E line that runs north-south from Owatonna, Minn., to near Mason City, Iowa. In addition to interchanging with CP at Winona or CN at Dubuque, IC&E could run its own coal trains right into Chicago, via Savanna, Ill. One insider estimates the cost of upgrading IC&E tracks for coal service from Owatonna to Chicago at hundreds of millions of dollars.

In a letter to employees last week, Schieffer pleaded that they be patient and not fearful. "In the coming weeks," he wrote, "we will have potential investors and possible partners on the property. There are lots of lookers, and we will allow many different players to look things over. But just because they are looking doesn't mean they will ultimately be in the deal, or that there will be a deal."

Cedar American is privately owned. But rail supplier L. B. Foster Co. (symbol FSTR) owns 13.4 percent of Cedar American - the result of a \$9 million investment made when DM&E was bought from North Western. Foster's filings with the Securities and Exchange Commission state that the value of its share of Cedar American far exceeds that original investment.

ATTACHMENT 2

Railroad for sale?

DM&E seeks buyers to put expansion plan back on track

By Kevin Dobbs
kdobbs@argusleader.com
Published: June 15, 2007

The Sioux Falls-based Dakota, Minnesota and Eastern Railroad's parent company - whose \$6 billion expansion stalled this year when it was denied a \$2.3 billion federal loan - is taking buyout bids for all or part of the company as part of a plan to rejuvenate its controversial growth plan.

A sale could give the company as much as \$1 billion in new money, which some analysts say could serve as a foundation to entice other investors, much as the federal loan would have done. Moreover, a deep-pocketed new owner could add to that base and re-apply for the federal loan, said Fred Frailey, editor of Kiplinger's Personal Finance who has researched the possible sale.

"I think that at least is a good possibility," Frailey said Thursday.

Federal Railroad Administration head Joe Boardman said in denying the loan in February that the DM&E, which already had received more than \$200 million in federal loans, was leveraged too far to take on an additional \$2.3 billion in debt.

Frailey wrote a report published this week by *Trains* magazine that said investment bankers representing Cedar American Rail Holdings, parent of the DM&E, approached 10 would-be bidders to listen to a pitch from Chief Executive Officer Kevin Schieffer in recent days.

Canadian National Railway Co. and Canadian Pacific Railway were among them, according to Frailey.

Schieffer on Thursday would not confirm nor deny the report but said the company is looking into several options to revive the expansion, and he did not rule out a sale. He has said that the company also is seeking private investors to augment its bank account no matter the source of its foundation money.

In a recent letter to employees obtained by the *Argus Leader*, Schieffer said: "In the coming weeks, we will have potential investors and possible partners on the property. There are lots of lookers, and we will allow many different players to look things over.

"But just because they are looking doesn't mean they will ultimately be in the deal, or that there will be a deal. We are a long ways from that point yet."

Schieffer did say that whether "selling, buying or reshuffling," the company's chief goal remains rebuilding 600 miles of track across South Dakota and Minnesota and building more than 250 miles of new track around the southern end of the Black Hills to reach Wyoming's Powder River Basin. The basin is the source of a wealthy supply of low-sulfur coal, which DM&E trains would haul east through Pierre, Brookings and beyond to Rochester, Minn.

Roy Blanchard, a railroad industry analyst based in Philadelphia, said a probable scenario would involve a sale to a private equity group - if that group agreed to keep Schieffer and his management team and their goal of reaching the coal fields of Wyoming.

According to Wall Street analyses, DM&E could, in a best-case scenario, fetch as much as \$1.2 billion in a sale, Blanchard estimated. That would be enough to pay off investor-owners - according to estimates that they hold no more than \$200 million in the company - and leave DM&E about \$1 billion to spend on the expansion.

Such a foundation could jump-start a larger investment campaign and persuade federal officials to reconsider the loan.

That premium price, Blanchard said, would be paid by a patient investment group that believed in the long-term profitability of hauling coal.

Blanchard said Schieffer is famously committed to the decade-in-the-making project, and that it is unlikely the chief executive would support a sale to another railroad. A competing railroad, he said, would want to bring in its own management team and assess all its options before committing to the expansion.

Schieffer, in an interview, confirmed that he wants to personally see the project through.

"Sioux Falls is our headquarters, and South Dakota is our home base. I have no desire or intention of going anywhere else, on a personal level. ... Our focus is on building the Powder River Basin project, and I have eternal confidence we will get that done. I'd have to cry a couple of very big crocodile tears if somebody else built it."

Schieffer and DM&E's effort to reach the basin date back to the mid-1990s. They had at one point planned to be hauling coal by now. But getting regulatory approval in the face of stiff opposition from some Wyoming and South Dakota residents - namely in Pierre and Brookings - and a powerful fight waged by officials at Mayo Clinic in Rochester chronically delayed plans.

DM&E officials applied for the \$2.3 billion federal loan on the premise that it would bolster rail capacity and that hauling coal would advance the nation's effort to gain energy independence.

It now must convince investors that coal remains a profitable enterprise, one that eventually will get on track.

"I remain absolutely committed to getting that done," Schieffer said.

ATTACHMENT 3

Federal judge upholds state law to slow trains in Orr

Going from 60 miles per hour to 30 mph isn't a burden for the Canadian National Railway, the ruling said.

By Rochelle Olson, Star Tribune

Last update: June 04, 2007 – 9:25 PM

A state law passed to make trains slow down from 60 to 30 miles per hour as they pass through Orr in northeastern Minnesota is constitutional, a federal judge ruled Monday.

"The time involved in traveling through Orr at 30 [miles per hour] is not much greater than traveling through Orr at 60 [miles per hour]. Thus ... the special law is not an impermissible burden on interstate commerce," U.S. District Judge Michael Davis wrote.

Canadian National Railway challenged the 2005 state law on several grounds, including that it violated the commerce clause of the U.S. Constitution. The clause bars state legislation if it discriminates against interstate commerce or creates an excessive burden

Canadian National Railway argued that federal law, which allows trains to go up to 60 miles per hour, should supersede the state law.

Minnesota Attorney General Lori Swanson defended the state law after the railroad sued, saying that local governments can pass laws based on local safety concerns.

A train derailment — the second in two years — provided Orr residents with a new example of concerns about Canadian National trains, some of which carry hazardous cargo. As a train whistled in the background Monday, Brian Bruns, co-chairman of the Orr Rail Safety Committee and owner of a grocery in town, said he's "very happy" with the ruling.

If a car derails, "we feel at 30 miles per hour, we have a better chance of having those tanker cars stay intact rather than having it leak," Bruns said. "I'm hoping they're going to comply" rather than appeal.

Each day, 15 to 20 trains pass through Orr within 150 feet of the high school football field, a playground, a fire station, propane tanks and the business district. In the most recent crash, no one was hurt, but 14 of the 91 cars derailed.

Most of them were empty, but one carried flammable gas residue.

Orr, a town of 265 residents about 55 miles southeast of International Falls, has coexisted with the railway for nearly a century, relying on it to carry lumber, people and goods.

The tracks run along Hwy. 53 through the middle of town, which lies on the shore of Pelican Lake. A spokesman for the railway did not return calls.

ATTACHMENT 4

Copy of text only from a June 19, 2007 letter from Governor M. Michael Rounds, State of South Dakota to the Committee for a Safer Pierre and Ft. Pierre, Mr. Mike Pulaski Secretary

**STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR
June 19 2007**

**The Committee for a Safer Pierre and Ft Pierre
Mike Pulaski
Corresponding Secretary
1323 West Capitol Avenue
Pierre, SD 57501
Dear Committee Members:**

Thank you for your letter regarding a railroad bypass around Pierre and Ft Pierre. While I recognize the funding challenges we are faced with, I have always supported a bypass.

I also support the Dakota, Minnesota and Eastern (DM&E) Railroad expansion and rehabilitation project. The future of the expansion is unclear at this time, but the project holds tremendous opportunity for the state of South Dakota. In addition to increased tax revenue and thousands of new jobs, South Dakota's agriculture producers would benefit greatly from more efficient and competitive transportation options for their products. Furthermore, the expansion project would have a profound impact on our energy industry- especially in regard to the transportation of renewable fuels like ethanol and biodiesel.

It is possible to build a bypass around Pierre and Ft. Pierre. However, a bypass is estimated to cost about \$180 million. Neither the state nor the cities of Pierre or Ft. Pierre have the resources to fund a bypass. In other words, I don't foresee a bypass being built without the majority of funds coming from the federal government.

I remain committed to working with our congressional delegation and the cities of Pierre and Ft. Pierre to secure funding for the bypass. Citizens who support a bypass can help by contacting their senators and representative. However, Congress is faced with significant budget constraints and it will be extremely difficult to obtain such funding.

While the DM&E expansion and rehabilitation project is clouded with uncertainty, it is important to continue working on mitigating the impacts of the potential project. Staff is working with the city of Pierre in facilitation of the city's mitigation plan. While I would prefer to have a bypass around Pierre, we have to plan for a scenario in which we don't have a bypass. I believe the Pierre Mitigation Plan addresses the essential safety issues that the project would create if it becomes a reality without a bypass.

Sincerely,

Signed by Governor Rounds

BROOKINGS RAILROAD SAFETY PLAN
BROOKINGS RAILROAD SAFETY COMMITTEE
Respectfully submitted:

x Robert V. Burns
Robert V. Burns

x Karen Hardy Cardenas
Karen Hardy Cardenas

x Gerald Friczen
Gerald Friczen

x O. Dale Larson
O. Dale Larson

x Gary E. Larson
Gary E. Larson

x Douglas E. O'Neill
Douglas E. O'Neill

x Wesley G. Tschetter
Wesley G. Tschetter

x Deb Tweed
Deb Tweed

x Edward Patrick Hogan
Edward Patrick Hogan, Chair

Dated: June 27, 2007

June 26, 2007

Deborah Kay Tweed

211 6th Ave S.

Brookings, SD 57006

To Whom It May Concern:

First, I would like to thank the Mayor Munstermann and the City Council for this opportunity to serve on this committee.

But with the recommendations that we have come up with I object to one I do not agree with the recommendation for a bypass around Brookings. I do not feel it is the best way to keep all of Brookings safe. I feel we just push the city problem on to other people.

But I do agree with all the other recommendations. I strongly agree with grade separations and depressing the track. I also strongly agree with the need for gated crossings and that they need to be implemented as soon as possible.

I am writing this letter so that my objection can be included with the proposal as it goes forward.

I want to thank all of the BRSC members for all their hard work and input in this proposal. This letter is not any reflection on their thoughts on this proposal, but my own beliefs that I felt needed to be expressed.

Sincerely,

/

Deb Tweed

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