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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

FEB 3 2006

Ref: 8EPR-N

Ms. Victoria Ruston
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, D. C. 20423-000

RE: Final Supplemental Environmental
Impact Statement for the Dakota, Minnesota &
Eastern (DM&E) Railroad Corporation
CEQ#20050553

Dear Ms. Ruston:

The Environmental Protection Agency (EPA) Region VIII has reviewed the Final Supplemental Environmental Impact Statement (SFEIS) for the DM&E railroad's construction into the Powder River Basin (PRB). The EPA reviews EISs in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 of the Clean Air Act directs EPA to review and comment in writing on the environmental impacts of any major federal agency action.

Following the Surface Transportation Board's (STB) issuance of the FEIS, the STB gave final approval to the PRB Expansion Project in 2002. Following judicial review (*Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir.2003)), the Eighth Circuit Court of Appeals upheld the Board with respect to all of the transportation issues and most of the environmental issues, but it remanded this rail line construction case for further Board review and analysis of the following issues:

- Whether mitigation for increased horn noise is warranted;
- The relationship between vibration and horn noise;
- Potential increased coal usage and related air emissions that could result from this project;
- Ensuring that the Programmatic Agreement governing the historic review is executed.

EPA is rating the SFEIS an EC-2. "EC" (Environmental Concerns) signifies that the EPA review of the SFEIS identified environmental impacts that should be avoided in order to fully protect the environment. For this project, the potential for significant impacts to wetlands and riparian areas remains a concern, and EPA is looking forward to working with DM&E and the COE in the development of mitigation strategies for the protection and mitigation of impacts to wetlands. The "2" signifies that there is insufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment. For this project, the mitigation plan for wetlands and riparian areas is unavailable.

We hope these comments are useful. If you have any questions or would like to discuss our comments, please feel free to contact either Robert Edgar at 303-312-6669 or me at 303-312-6004.

Sincerely,



Larry Szyboda
Director, NEPA Program
Ecosystems Protection and Remediation

cc: Kathleen Kowal, EPA Region 5

