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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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Ref: 8EPR-N

JUN 20 2005

Victoria Rutson  
Section of Environmental Analysis  
Case Control Unit  
Finance Docket No. 33407  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001

Re: Comments on the Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin DM&E CEQ#20050163

Dear Ms Rutson:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et. seq., and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, the Region 8 office of the Environmental Protection Agency (EPA) has reviewed the referenced Draft Supplemental Environmental Impact Statement (DSEIS) for the Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin Project (DM&E).

EPA has reviewed the DM&E document and offers a few general comments concerning the analysis as required by the 8<sup>th</sup> Circuit Court of Appeals Decision in Mid States Coalition for Progress v. STB. EPA finds that the analysis concerning horn noise, noise and vibration synergies, and programmatic agreement to be sufficient. However, there are remaining air quality questions in the DSEIS which the following comments address.

We recognize the difficulties in determining impacts from long-term projects concerning energy and coal usage. However, the new analysis in the DSEIS seems to contradict statements of purpose and need found in Chapter 2 of the Final EIS. The most obvious example includes the following simple generalization. In the Final EIS, Chapter 2 on Purpose and Need, discusses the need for Powder River Basin (PRB) coal to reduce SO<sub>2</sub> emissions and how the vastly reduced cost of PRB coal will greatly increase demand for coal from Wyoming. Those statements when contrasted with projections in the DSEIS that forecast very minor increases in coal usage and electricity generation does not provide a clear understanding of what the potential for regional air quality impacts from this project potentially might include.

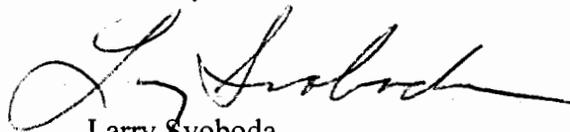
Since the completion of the Final DEIS, the price of natural gas has dramatically increased making the outlook for coal usage even more competitive making the DSEIS analysis appear even more confusing. Primarily, it is not clear that the Energy Information Administration's coal usage forecast supporting the air quality modeling in the DSEIS analysis reflects these recent gas price predictions.

Although some of the increased usage of PRB coal will be replacement of more costly and higher sulfur content coal, the increased availability of inexpensive coal could reduce or preclude the competitiveness of other low emission sources of electricity which would have additional environmental benefits. It must also be understood as is pointed out in the analysis that PRB coal will continue to emit NO<sub>x</sub>, mercury and CO<sub>2</sub>. EPA concurs with the analysis that there could be large benefits for replacing higher sulfur content coal with PRB coal. However, the DSEIS analysis also points out that NO<sub>x</sub> and mercury emissions will remain the same or increase under this scenario. In addition, the DSEIS analysis does not consider the climate changing aspects of increases to CO<sub>2</sub> emissions nor is there mention of the potential for reducing these impacts by using emerging technologies such as carbon sequestration.

Finally, the 8<sup>th</sup> Circuit Court of Appeals specifically requested a long-term evaluation of air quality impacts from PRB coal usage on local use areas and regional areas. EPA agrees with the difficulties of specifically determining the local area impacts caused by future coal usage from this project. We also found the results of the regional impact analysis for predictions to be appropriate, as was determined in the DSEIS. However, EPA does question using a 15 year projection (2005 to 2020) to be a comprehensive look at the long-term nature of potential impacts from this rail expansion project when the expected life of the rail project and production of PRB coal would extend well past the year 2020.

EPA's previous comments on the prior Final EIS are enclosed and we request that the new Final EIS incorporate those concerns as well as the comments noted above. Based on the procedures EPA uses to evaluate the potential effects of proposed actions and the information in the DSEIS, the Proposed Actions identified by the DSEIS for the Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin has been rated EC-1. A copy of the EPA rating system has also been enclosed. Please call me at (303) 312-6004 if you have any questions concerning our comments.

Sincerely,



Larry Svoboda  
Director, NEPA Program  
Office of Environmental Protection and  
Remediation

Enclosures

Cc: Kathleen Kowal, EPA Region V



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December 27, 2001

Ref: 8EPR-N

Ms. Victoria Rutson, Project Leader  
Section of the Environmental Analysis  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

RE: DM&E Railroad Final Environmental  
Impact Statement (FEIS) - Surface  
Transportation Board Finance Docket No.  
33407 (CEQ Docket # 010444)

Dear Ms. Rutson:

In accordance with the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, Environmental Protection Agency (EPA) offices of Regions 5 and 8 have reviewed the referenced FEIS.

EPA would like to recognize the Surface Transportation Board (STB) for their commitment to diligently identifying and reducing impacts that could result from this project. The extensive mitigation requirements itemized in Chapter 12 will have a large impact on how the project proceeds with respect to protecting the environment. The changes that have been made to the FEIS as a result of STB's response to our comments on the Draft Environmental Impact Statement (DEIS) have addressed the majority of our original concerns that were identified in our comment letter.

The concerns from our comments on the DEIS that remain are discussed below. If concerns identified in our previous comments on the DEIS are not discussed, STB should conclude that we believe those comments were adequately addressed in the FEIS. In addition, new information has been identified since our comments on the DEIS were submitted. Specifically, the issues related to the M-2 option near Mankato, Minnesota. Please refer to our agreed upon language as discussed below.



## General Comments

### Air Quality

EPA's prior comments on air quality impacts and mitigation in the DEIS pointed out that no mitigation had been identified and that the negotiations to identify air mitigation had not yet been completed. The revised summary of air impacts analysis in the FEIS was a marked improvement over the DEIS and we believe this adequately identifies potential air impacts that would result from this project. However, our current information concerning the Air Quality Working Group, as of the date on this letter, is that these negotiations have not yet reached a conclusion. As a result, mitigation for impacts and the associated costs were still not identified in the FEIS. EPA supports STBs intent to keep all stakeholders involved in the process to ultimately determine the necessary mitigation for the identified air quality impacts and the associated costs.

Section 12.8 did not mention mitigation for air impacts. The FEIS should have included the costs for mitigation requirements 82 and 83 (Section 12.9.1.6).

Section 10.2 **Air Quality** anticipated that no violations of National Ambient Air Quality Standards are expected. This statement should be revised since recent violations of the PM10 standard were incurred at monitoring locations in the Powder River Basin. Although the significance of these violations has not been determined, STB's decision document should appropriately address sources of particulates in this region.

### Water Quality and Wetlands

With regard to watersheds and wetlands impacts, during the Draft EIS (DEIS) stage, Region 5 provided fifteen pages of detailed comments to the Section of Environmental Analysis (SEA) on specific elements of the DEIS that needed to be addressed or explained. SEA attempted to address these comments in Volume IV-A, Appendix B of the FEIS, but the response was extremely difficult to follow and it was impossible to determine if our comments were addressed at all. By comparing portions of the DEIS with the FEIS, we were able to determine that some of our comments were recognized, even though SEA did not always change its original recommendations. In most other cases, however, it was impossible to determine if our comments were at all considered. In those cases, we repeat our original comments for additional information that needs to be provided to the Corps of Engineers/St. Paul District Office (COE) to satisfy the requirements of the 404 permit application.

### Mankato Southern Bypass or M-2 Option

New information supplied to STB in the "DM&E Expansion Project Comments on Draft EIS" prepared by Blue Earth County and dated February 2001, has come to our attention and relates to impacts in the Blue Earth River in the vicinity of the Town of Skyline. It was our

understanding that STB was in possession of this information and the report was used to supplement the baseline information to evaluate costs to mitigate impacts for the M-2 option. The preliminary design information in the Blue Earth County report identified the possibility that a large amount of fill could be placed into the Blue Earth River.

On December 19, 2001, representatives from EPA Regions 5 and 8, Office of Federal Activities (OFA), Office of Wetlands, Oceans and Watersheds (OWOW) and the STB held a conference call to discuss the issues surrounding the Mankato, Minnesota alternatives and their impacts. Of concern to EPA was the availability of new engineering information in the Blue Earth County report for the Southern Bypass alternative (M-2) suggesting that a portion of the Blue Earth River would require to be filled in order to accommodate this alternative. Discussions with STB to clarify this issue has identified that the fill into the Blue Earth River could be eliminated by using different slopes for cut and fill and incorporating retaining walls into the design. At the end of discussions, it was agreed that new language should be introduced into the Record of Decision (ROD) outlining explicitly that if the DM&E chooses to place fill into the Blue Earth River, then the DM&E would be required to notify the STB of this decision. The STB would then examine this matter and consult with EPA to determine the impacts and the appropriate level of mitigation and reporting. EPA has had the opportunity to review this new draft ROD language and is satisfied with the condition it sets forth (see attached language).

### **Specific Comments**

#### **Water Quality Impacts**

We note that Chapter 4.1.4 and Table 4-2 present information on waters that are listed as impaired under Section 303(d) of the Clean Water Act (CWA). We concur with the conclusions and recommendations in the FEIS regarding anticipated impacts to these waters and proposed measures to reduce those impacts. However, we recommend that SEA provide to the COE a map showing the locations of these waterbodies and the places where the rail line will cross them. SEA could also indicate crossings of impaired waters by referencing stream crossing numbers used in Volume V, Project Maps, that were part of the Section 404 permit application.

#### **General Recommendations for Wetland Mitigation**

We repeat our request that DM&E commit to selecting former wetland sites that were legally altered (i.e., prior converted cropland) for mitigation sites. Please advise the COE of this information.

We repeat our suggestion that DM&E consider other factors in the selection process that may influence or enhance success and functional values of the wetland, as described in our letter of March 20. These factors include, but are not limited to, adjacency to streams, water bodies, or other wetlands, basin morphology, landscape position, location in the watershed,

and opportunities to combine the mitigation with enhancement, restoration, or preservation efforts by State, local, or private resource agencies.

Again, we emphasize the need to permanently protect all mitigation sites. All selected mitigation sites must contain easements, deed restrictions, or similar measures to ensure that they will remain jurisdictional waters of the U.S. and not be altered for any purpose.

We repeat our request for specific information on how DM&E will ensure that the mitigation sites will have sufficient hydrology to comply with the requirements of the 1987 Wetlands Delineation manual. Please advise the COE of this information.

We again recommend that DM&E commit to replacing wetland vegetation types in kind, i.e., forested wetland replacement for forested wetland loss.

We again request that DM&E commit to producing conceptual wetland restoration plans, including plant selection, planting plans, assurance of proper hydrology, control of alien species, success criteria, monitoring, and replacement or other corrective measures. Please provide the COE with this information.

#### Middle East Staging Area

We concur with the reasoning behind SEA's recommendation of Option B, provided the wetland loss is fully mitigated at a ratio of at least 1.5:1.

#### Wetland Delineation and Mitigation

In the Public Notice of September 29, 2000, the COE/St. Paul District stated that the total wetland impact in Minnesota was 240 acres. This is the figure we used in our wetland impact and mitigation calculations, and we have seen no evidence in the FEIS to suggest a lower figure. However, Chapter 12, Attachment D, shows a total of only 230 acres of wetland, assuming that Alternative M-2 is chosen. The FEIS apparently excluded, without explanation, the 10 acres of lakes and streams that were in the DEIS, for which mitigation will also be needed. Without evidence to the contrary, we will still base our mitigation recommendation on a total of 240 acres of wetlands and other waters impacted.

We are pleased to note that the General Mitigation Measures in Chapter 12.7.1 as well as Attachment D include an anticipated wetland mitigation ratio of 2:1. However, the Measures and Attachment D propose a ratio of only 1:1 for "isolated" wetlands. Although the FEIS states that none of the wetlands in Minnesota are isolated, we disagree with the notion that these wetlands are worth less than other wetlands. In many cases they provide critical habitat functions that cannot be performed entirely by existing adjacent wetlands. Furthermore, the definition of "isolated" will be based on a jurisdictional decision by the COE with advice from U.S. EPA, and it is premature to speculate on which wetlands are jurisdictionally "isolated."

EPA's comments on the DEIS for information on wetland mitigation remain unanswered in the FEIS. In view of the fact that the project's wetlands mitigation information has not been fully detailed within the FEIS, EPA maintains its environmental concerns in this area. Accordingly, EPA reserves the right to potentially provide further comment on the subject of a satisfactory wetlands compensation plan on behalf of this project, in accordance with our authorities under Section 404 of the CWA.

With regard to the City of Rochester, EPA has reviewed the discussions for the recommended mitigation measures for the through town alternative. Although the recommended mitigation measures will go a long way toward alleviating some of the concerns voiced by the residents of Rochester, EPA still perceives the impacts of the through-town alternative as a nuisance to public health and safety due to the increased frequency and duration of unit coal trains.

We appreciate the opportunity to offer comments on this project. If you should have any question, please contact Mr. Mazin Enwiya in Region 5 at 312/353-8414 or email at [enwiya.mazin@epa.gov](mailto:enwiya.mazin@epa.gov) or Gregory Oberley in Region 8 at 303/312-7043 or email at [oberley.gregory@epa.gov](mailto:oberley.gregory@epa.gov).

Sincerely,

Elyana Sutin, Acting Chief  
NEPA Unit  
Ecosystems Protection Program

Enclosure

cc: Mazin Enwiya, EPA Region 5  
Wendy Schmitzer, USDA Forest Service  
Bill Carson, USDI Bureau of Land Management  
Karen Lawrence, US Army Corps of Engineers  
Tim Fell, US Army Corps of Engineers  
Kenneth Parr, USDI Bureau of Reclamation  
Bruce L. McLaren, US Coast Guard



**Environmental Protection Agency Rating System for Draft Environmental Impact Statements  
Definitions and Follow-Up Action\***

**Environmental Impact of the Action**

**LO - - Lack of Objections**

The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC - - Environmental Concerns**

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

**EO - - Environmental Objections**

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU - - Environmentally Unsatisfactory**

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

**Adequacy of the Impact Statement**

**Category 1 - - Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2 - - Insufficient Information**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

**Category 3 - - Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

