

APPENDIX B

Draft EIS Comments and Responses

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Appendix B

Public Comments and Responses

This appendix provides an overview of the public comments the Board's Section of Environmental Analysis (SEA) and cooperating agencies received on the Draft EIS. The appendix also includes summaries of the substantive comments the agencies received and the agencies' responses to those comments. Where comments warranted additional discussion or analysis beyond that included in the Draft EIS, Chapters 2 through 12 of the Final EIS provide further discussion and responses.

B.1 Overview of Public Comments

SEA and the cooperating agencies received approximately 8,600 comments on the Draft EIS. These comments included letters raising substantive issues on the Draft EIS, letters including only general comments, and approximately 3,800 form letters. In addition, SEA received 24 petitions containing approximately 15,400 signatures. Form letters and petitions included statements both in support and opposition to the project in part or whole.

Table B.1-1 lists the Federal, state, and local agencies and officials that submitted comments on the Draft EIS. Table B.1-2 lists other organizations that submitted comments.

**Table B.1-1
Federal State, and Local Agencies and Officials Submitting Comments**

Federal Agencies & Officials

U.S. Senator Paul Wellstone	U.S. Department of the Interior	U.S. Department of Transportation
U.S. Environmental Protection Agency	U.S. Department of the Interior, Bureau of Reclamation	National Trust for Historic Preservation
U.S. Army Corps of Engineers	U.S. Department of the Interior, Fish and Wildlife Service	

State Agencies & Elected Officials

Minnesota

State Senator Sheila Kiscaden
State Representative William Kuisle
Pollution Control Agency
Department of Natural Resources
Department of Transportation
Historical Society
Department of Agriculture

South Dakota

Governor's Office
Department of Game, Fish and Parks

Wyoming

Office of Federal Land Policy
Office of the Governor
State Parks & Cultural Resources (SHPO)
State Geologic Survey
Department of Transportation
Game and Fish Department
Niobrara Conservation District

Cities, Townships, Counties and Regional Governments

Minnesota

Blue Earth County
Olmsted County
Steele County
Dodge County
Rochester-Olmsted Council of
Governments
Winona County Highway
Department
City of Austin
City of Dover
City of Goodview
City of Mankato
City of Owatonna
City of Rochester
City of Skyline
City of Tracy
City of Winona
Mankato Township
Salem Township
Pleasant Grove Township
High Forest Township
Kalmar Township

South Dakota

City of Brookings
City of Pierre
Custer County Conservation
District

Wyoming

Converse County

Iowa

City of Dubuque

Table B.1-2

Tribes, Business Organizations, and Citizen Groups Submitting Comments

Native American Tribes	Business & Non-Profit Associations	Citizen & Environmental Groups
Cheyenne River Sioux Tribe	Associated General Contractors of South Dakota, Inc.	Clean Water Action Alliance
Crow Creek Sioux Tribe	Dairyland Power Cooperative	Cheyenne River Railwatch
Kul Wicasa Oyate, Lower Brule Sioux Tribe	DM&E Railroad	Citizens Against Rochester Bypass
Lakota Landowners Association, Pine Ridge Indian Reservation	Dodge County (MN) Farmers Union	Citizens Against Brookings Bypass
Lower Sioux Indian Community	Edison Electric Institute	Citizens to Stop the Coal Trains
Mahkato Mdewakanton Association	Mayo Foundation	Midstates Coalition for Progress
Mandan, Hidatsa & Arikara Nation	Minnesota Agri-Growth Council	Minnesota Trout Association
Oglala Sioux Parks & Recreation Authority	Minnesota Corn Growers Association	Minnesotans for an Energy-Efficient Economy
Shakopee Mdewakanton Sioux Community	Minnesota Grain and Feed Association	Prairie Hills Audubon Society
Standing Rock Sioux Tribe	National Industrial Transportation League	Sierra Club, Black Hill Group
	Rapid City Area Economic Development Partnership	Sierra Club, South Dakota Chapter
	Rochester Area Chamber of Commerce	Southeast Minnesota Coal Train Coalition
	Rochester Area Economic Development, Inc.	
	Western Coal Traffic League	
	Washington Infrastructure and Mining	
	Wisconsin Public Service Corporation	
	Wyoming Business Council	

B.2 General Comments

SEA and the cooperating agencies received more than 1,000 letters providing general comments on the Draft EIS. Generally, these letters included statements of support or opposition to the proposed project or proposed bypasses. In some cases, commenters' support for the project was conditioned on selection of specific alternatives, or approval of certain bypass proposals. SEA reviewed each of these letters and determined that they did not include substantive comments on the Draft EIS that warranted response in the Final EIS. However, SEA and the cooperating agencies determined that these comment letters should be acknowledged and summarized. The following is a brief summary of the general comments on the Draft EIS, grouped by region. The Board will consider all comments in its decision on the proposed project.

B.2.1 Mankato, Minnesota

SEA received 320 general comment letters from citizens of Mankato, Minnesota. A substantial majority (95 percent) of these letters opposed the project because of potential negative environmental impacts regarding noise, vibrations, air quality, possible derailments resulting in hazardous spills, and effects on health. Citizens were concerned that increased train traffic, train speed and the bisecting of the town would result in decreased property values, compromised pedestrian safety and emergency response delays. Commenters also mentioned that the Board should consider the cost of mitigation before making a final decision. The citizens supporting the project concluded that the proposed DM&E project would be of economic benefit to Mankato, Minnesota and also increase fuel efficiency through the region.

B.2.2 Rochester, Minnesota

A substantial majority (90 percent) of the 332 general comment letters submitted by citizens of Rochester opposed the DM&E project. The citizens of Rochester were most concerned about the effect of the railroad on the Mayo Clinic and historic buildings in downtown Rochester. Commenters also expressed concerns that the town would be bisected by the railroad and the result would compromise pedestrian safety, delay emergency response, and decrease property values from noise and vibration. Citizens commented that the increased number of trains and train speed could be detrimental to health and safety because of air pollution and potential derailments resulting in hazardous spills. Commenters also mentioned that the Board should consider the cost of mitigation before making a final decision.

The commenters supporting the project pointed out that the railroad was present when the citizens purchased property near the tracks and that at the inception of the Mayo Clinic the railroad was considered an asset. These commenters also supported the project because of economic benefits.

B.2.3 Winona, Minnesota

Citizens from Winona submitted 116 general comment letters in response to the Draft EIS. Three letters supported the DM&E project, six letters opposed the project, and the other 107 letters expressed general environmental concerns. Commenters expressed concern about the proposed action. Commenters cited negative environmental impacts, air quality, noise, vibration, negative effects of bisecting the city, decreased property values and detriment to the quality of life in Winona as issues of concern. Citizens of Winona stated concerns that the increased number of trains and the speed of trains could threaten pedestrian safety and cause delays of emergency response. Commenters also mentioned that the Board should consider the cost of mitigation before making a final decision.

B.2.4 Other Minnesota Cities

SEA received 213 comment letters from citizens of Minnesota in other communities, including Kasson, Stewartville, Eagle Lake, Byron, and Austin. Generally the comments varied according to location. Commenters from the cities located close to Rochester opposed the proposed project and commenters from the cities along the bypass routes supported the proposed project.

B.2.5 Huron, South Dakota

SEA received 150 general comment letters on the Draft EIS from Huron. Approximately 85 percent supported the proposed project because of direct benefits to the City. Commenters cited safety as a benefit of the project because DM&E would increase safety at rail crossings and eliminate the need for a high volume of trucks on the highways. Commenters also stated that jobs created by construction and maintenance of the railroad would invigorate the local economy, encourage population growth and bring new tax revenue to community governments and public schools. The majority of citizens from Huron who submitted comments also supported the proposed project because it would support the farm economy by improving transportation efficiency and fuel efficiency and by reducing transportation costs for farm commodities.

The citizens opposing the proposed project expressed concerns regarding potential impacts of the project, including health impacts, safety, and decreased property values from noise and vibration.

B.2.6 Pierre, South Dakota

Approximately 90 percent of the 157 general comment letters received from citizens of Pierre supported the DM&E project, if the route bypasses the City. These commenters stated that increased rail traffic bisecting the City could cause unnecessary delays for emergency response vehicles and compromise pedestrian safety. Train speed was also an issue of concern. Commenters stated concerns that noise and vibration would be disruptive to homes, hotels, business, and schools and could decrease property values. Commenters also were concerned about negative environmental impacts of the project, including air quality and health concerns and potential derailments resulting in hazardous spills. Commenters also mentioned that the Board should consider the cost of mitigation before making a final decision.

Other commenters opposed to the project agreed with the above concerns and also opposed the bypass because of negative impacts to wildlife.

B.2.7 Other South Dakota Communities

SEA received 131 letters from citizens of other communities in South Dakota, including Hot Springs, Deadwood, Miller, and Hermosa. Approximately 85 percent of the citizens supported the proposed DM&E upgrade, while the other 15 percent either requested an extension of the comment period or opposed the project.

B.2.8 States Outside Project Area

SEA received 148 letters from communities outside the project area, including Texas, Nebraska, Colorado, and Washington D.C. Some citizens commented on behalf of a relative in the project area. Other commenters own land near the project. Several legal, environmental and technology experts offered opinions on the proposed project.

SEA and the cooperating agencies reviewed and acknowledged the issues raised in each of these general letters, although the Final EIS does not include specific responses for these comments. Chapter 3 includes discussion of the issues identified related to the new rail construction for noise, pedestrian safety, emergency response delays, decreased property values,

vibration, air quality, derailments resulting in hazardous spills, safety of railroad crossings, tax revenue, and wildlife. Chapter 4 discusses issues related to the rehabilitation of the existing DM&E rail line and the construction of rail yards. Chapters 5 through 9 provide specific discussion of the issues identified for the communities of Pierre and Brookings, South Dakota and the Minnesota communities of Mankato, Owatonna, and Rochester (including the Mayo Clinic), respectively. Chapter 12 discussed the estimated costs for the recommended environmental mitigation.

B.3 Form Letters and Petitions

SEA received approximately 3,900 form letters and postcards during the public comment period on the Draft EIS. Table B.1-3 summarizes these form letters. As noted above, SEA received petitions that included approximately 15,400 signatures. Table B.1-4 lists the petitions SEA received.

Table B.1-3		
MINNESOTA -- Approximately 680 Letters/Cards		
Geographic Area	Number	Key Issues
Southern Minnesota	110	Support for the proposed expansion project and Alternative C, the preferred alternative. Support for improved safety, DM&E
Mankato	20	Concern for the shipping of hazardous waste along the DM&E route.
Mankato	60	Concern for the proposed project related to air quality and
Mankato	70	Against the proposed action. Concern for all alternatives through
Mankato	10	Concern that the project has ignored Environmental Justice issues in Minnesota, lack of notification to affected communities, and use of 1990 census data.
Mankato	10	Opposition to the in-city route that would impact Native American parks. General concern about the project impact to Native Americans and their sacred lands.
Rochester	350	Opposition to the proposed project, and concern over the safety record, health impacts, financial impacts to the city, traffic delays, and noise.
Winona	50	Concern that the DM&E EIS does adequately address impacts to the City of Winona. Specific concerns include land use impacts, geologic constraints, vibration impacts, traffic delays, and emergency response.
SOUTH DAKOTA -- Approximately 3,200 Form Letters/Cards		
Geographic Area	Number	Key Issues
General South Dakota, with emphasis in Huron	680	Support for the proposed expansion project and Alternative C, the preferred alternative. Support for utility providers to have cheaper access to coal. Support for safety improvements along the rail line.

General South Dakota, with emphasis in Huron.	320	Post cards in support of the proposed DM&E Revitalization Project.
Huron	420	Support for the preferred route, Alternative C. Support for the
General South Dakota	260	Support for the project as a lifeline for transportation of
General South Dakota	1,000	Support for the project to benefit communities and the stagnant farm community.
Seven county area	525	Support for the preferred route, Alternative C. Support for the project in order to open markets, increase new businesses, increase salaries, and create indirect jobs.

NOTE: SEA received approximately 300 additional form letters from residents in the project area requesting an extension of the public comment period.

**Table B.1-4
MINNESOTA**

Sponsor	Location	Signatures	Key Issues
Mayo Clinic patients	Rochester	8	Opposed to the plan to run trains through town because of noise and safety issues. Support a
Citizens to Stop the Coal Trains	Rochester	5,221	Opposition to the proposed DM&E expansion project and trains “speeding through Rochester.”
Concerned Citizens of	New Ulm	76	Noise, land use impacts, pedestrian safety,
Local Citizens	Owatonna	18	Support the No Action Alternative for the
Local Citizens	Mankato	11	Support the No Action Alternative for the
Local Citizens	Mankato	2,709	Those affected by the southern bypass do not want approval for the M-2 Southern Route (Southern Bypass).
Mt. Kato Ski Area	MN, IA,	143	
Mankato citizens	Mankato	98	
Citizens in Blue Earth, Nicollett, LeSueur, and Brown Counties	Mankato area	117	Concerns include potential impacts to the floodwall, City of Skyline impacts, notification, house takings, environmental impacts, and flood control impacts.
City of Skyline	City of Skyline	234	

SOUTH DAKOTA			
Sponsor	Location	Signatures	Key Issues
South Dakota Wheat Growers Association	Statewide	36	The project is necessary, timely, and beneficial to the State, allows market access, and promotes
Dakota Mill and Grain	Philip	70	
Bentonite Performance Materials	Belle Fourche	60	Support for the rebuilding and revitalization of the DM&E Railroad.
Pope & Talbot, Inc.	Spearfish	39	
American Colloid Co.	Bell	63	
Dakota Mill and Grain	Midland	99	
Local Citizens	Huron	236	Support for the rebuilding and revitalization of the DM&E Railroad.
Huron High School	Huron	87	
Citizens Against the	Brookings	914	Opposition to the Brookings Bypass.
Burke & Associates	Pierre	23	Encourage the DM&E Expansion Project, but request that any Board authorization permitting unit coal trains be required to bypass Pierre and Ft. Pierre, SD.
Pierre Area Chamber of Commerce	Pierre	4,984	
South Dakota Education Association	Pierre	17	Concerns include parking problems, traffic delays, safety, and environmental impacts.
Wegner Auto	Pierre	30	
WISCONSIN			
Sponsor	Location	Signatures	Key Issues
Wisconsin Citizens	Statewide	93	Support for Alternative C to allow for new competition and routing for the delivery of coal

B.4 Substantive Comment Summaries and Responses

As noted above, SEA and the cooperating agencies received more than 600 letters with substantive comments on the Draft EIS. The agencies also received oral comments from nearly 500 speakers at 12 public comment meetings in seven cities in Wyoming, South Dakota, and Minnesota during the public comment period. SEA and the cooperating agencies held an additional public meeting at the Rosebud Reservation in South Dakota focusing on the issues and interests of the Tribes. The written and oral comments included more than 5,600 individual issues about the project purpose, alternatives, and the environmental analysis. This section includes summaries and responses for the substantive comments SEA and the cooperating agencies received on the Draft EIS. Where comments warranted additional discussion or analysis beyond that included in the Draft EIS, Chapters 3 through 12 of the Final EIS provide further discussion and responses. The summaries and responses are organized by topic and then

subtopics under each topic. Topics include:

- Project Purpose and Need
- Project Alternatives
- Aesthetics
- Air Quality
- Biological Resources
- Cultural and Historic Resources
- Cumulative Effects
- Energy Resources
- Environmental Justice
- Geology and Soils
- Hazardous Materials
- Land Use
- Noise
- Recreation
- Safety
- Socioeconomics
- Transportation Systems
- Water Resources
- General Environmental Concerns

SEA placed copies of representative comments on the Board's web site (www.stb.dot.gov), where they are still available by using the "Filings" button and searching for "Dakota, Minnesota & Eastern."

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Topic: T07-Environmental Concern: General

SubTopic:

Factor: F02E-Analysis - Results

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Restatement 007625 95

The commentor stated the selection between extension alternatives B, C and D and the resulting siding locations would make significant differences in natural resource impacts in Minnesota. Alternative B includes sidings adjacent to five states Wildlife Management Areas, Alternative D has sidings adjacent to four WMA's, and Alternative C would have no sidings adjacent to WMAs. Sidings pose additional threats to wildlife movement as two tracks must be crossed, require twice as much application of herbicide, and potentially impact more habitats. In addition because the Draft EIS fails to consider state-listed species, significant differences in impacts of the various siding and yard locations are not recognized.

Response

SEA recognizes that Alternative D sidings would have had potential impacts to the Wildlife Management Areas. For this and other reasons, Alternative D has been dropped from further consideration. A description of the construction and operations related to sidings are presented in the Draft EIS, Chapters 1 and 2, with locations provided in Tables 2-6 and 2-7. Appendix I of this Final EIS contains a list and maps of the proposed siding locations.

Factor: F03B-Process - NEPA Compliance

26

Restatement 000234 9

Some commenters stated that they believed the environmental review process had not satisfied NEPA, although one commenter acknowledged that NEPA only requires agencies to take a hard look at environmental impacts, and that it is not necessary, under NEPA, to disapprove an action just because it causes environmental impacts that cannot be totally mitigated.

1. Format of the Draft EIS

One commenter said that the Draft EIS should have included an index and that 40 CFR 1502.10 recommends a standard format for Draft EISs to have a standard format, which includes an index. Another commenter pointed out that the fragmentation of topics, such as air quality made it difficult to identify the cumulative impacts of the project.

2. Public Participation and Review Requirements

One commenter said that not notifying the affected people on the WG Flat Alternative near Oral, SD or including them in the scoping process violated NEPA. Another commenter said that requiring commenters to send the Board multiple copies of comments over 5 pages was unduly burdensome, and that preventing the public from reviewing sources of information violates NEPA's goal of public participation. Another commenter pointed out that 40 CFR 1502.21 states that material incorporated by reference should be reasonably available for inspection by potentially interested persons during the comment period.

3. Discussion of Alternatives

One commenter said the Draft EIS did not fulfill NEPA's "hard look" requirement because the discussion of project alternatives was inadequate. The commenter said the Draft EIS should include specific alternatives and research on them, as well as the agency's choice of a preferred alternative for all project components with specific mitigation recommendations. The commenter said the Board's request for the public to develop additional alternatives showed a transfer of responsibility, and that if the Board lacks the

capability to prepare an adequate EIS, another agency should do it. Another commenter said that NEPA requires only that an agency consider alternatives that are reasonable and feasible, and that alternatives that would cause similar or greater environmental harm do not need to be considered.

4. Discussion of Adverse Effects

Another commenter said the Draft EIS did not state the unavoidable adverse effects of the project in the environmental consequences section, as required by 40 CFR 1502.16.

Response

1. Format of the Draft EIS

The Draft EIS was organized consistent with NEPA and CEQ guidelines at 40 CFR 1502.10. It was intended to provide clear and concise information to the public and agency decision makers on this extraordinarily complex project. In accordance with 40 CFR 1502.10, the Draft EIS described the proposed project, alternatives, existing environment of the proposed project, and the potential environmental impacts associated with the proposed project. Chapters and specific topics within each chapter were outlined in the Table of Contents and numerically coded to aid the reader in locating individual areas of interest. Tables and figures were listed numerically by the chapter in which they occurred. Appendices were denoted with alphabetic characters and included at the end of the EIS.

2. Public Participation and Review Requirements

Opportunities for public participation in the environmental review process in this case have been extensive. As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, the SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. Oral hearings also were held in several communities after issuance of the Draft EIS. The Draft EIS and its appendices provided ample documentation and citations for the public to review SEA's conclusions. It would have been impossible to reproduce in full all the material cited and incorporated by reference given the complexity of this project.

3. Discussion of Alternatives

As stated in the Council on Environmental Quality's (CEQ) regulations implementing NEPA at 40 CFR 1502.14, the analysis of alternatives in the EIS constitutes the most integral part of the document. All reasonable alternatives must either be examined in detail or an explanation of why they were omitted from detailed analysis must be provided. As NEPA and the CEQ regulations require, the Draft EIS examined several alternatives for each of the project components, including the No-Action Alternative. SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was needed to determine the environmentally preferable alternative for other project components. In the CEQ guidance "Forty Most Asked Questions Concerning CEQ's" National Environmental Policy Act Regulations (Forty Questions), the answer to Question 6(a) states "that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS."

According to answer 4(b) in Forty Questions, if the agency has not determined a preferred alternative or alternatives before issuance of the Draft EIS, it does not need to designate the preferred alternative or alternatives until the Final EIS. SEA's approach is consistent with Forty Questions.

4. Discussion of Adverse Effects

Chapter 5 of the Draft EIS detailed the cumulative environmental impacts of the proposed project.

Factor: F03C-Process - Public Outreach

26

Restatement 000234 9

Some commenters stated that they believed the environmental review process had not satisfied NEPA, although one commenter acknowledged that NEPA only requires agencies to take a hard look at environmental impacts, and that it is not necessary, under NEPA, to disapprove an action just because it causes environmental impacts that cannot be totally mitigated.

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Similar

4. Discussion of Adverse Effects

Chapter 5 of the Draft EIS detailed the cumulative environmental impacts of the proposed project.

Factor: F02D-Analysis - Mitigation

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Restatement 000376 9

The commentor states the mitigation measures suggested have no enforcement vehicle. Without enforcement such measures are meaningless.

Response

Chapter 12 of this Final EIS provides a discussion of the Board's authority to impose conditions in actions brought before it. Included in this discussion is information related to negotiated agreements between the Applicant and communities, voluntary Applicant mitigation, and mitigation related to pre-existing conditions.

Factor: F02D-Analysis - Mitigation

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Restatement 007541 9

The commentor states the Final EIS should recognize that the imposition of mitigation could have significant adverse effects on the operating capacity, efficiency, and net benefits of the transaction and DM&E's ability to complete the project.

Response

SEA recognizes the cost of mitigation measures. SEA believes that the proposed mitigation measures found in Chapter 12 of this Final EIS provide the Applicant with reasonable measures to ensure safety and resource protection.

Factor: F02B-Analysis - Existing Conditions

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Restatement 007566 9

The commentor believes there is confusion about the number of trains per day. The neighborhood groups represented know that to be three, which you agree with in the following:

Vol. II, P.3.1-87 the DM&E operates three trains per day.

Vol. II, P3.3-62 & 63, the number of trains per day is listed as 3.

Vol. II 3.3-44 all existing traffic (three trains a day).

Response

SEA directs the reader to Chapter 9 of this Final EIS for a discussion of the accurate train count. For modeling purposes the number has been revised to 3 in order to show worst-case conditions for future train traffic.

Factor: F02D-Analysis - Mitigation

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Restatement 007757 9

The commentor indicates the STB will see the proposed mitigation measures as something of a stop gap program for a community where increasing passenger and freight rail traffic cries out for a more comprehensive solution, possibly involving other rights of way. Ultimately, the work has to concentrate on the tracks themselves, not on the areas

that surround them. The high-speed corridor through Winona should in time be sealed just as the Northeast Corridor is sealed for long segments.

Response

The proposed mitigation measures presented in Chapter 12 of this Final EIS are in response to construction and operational impacts that are foreseen for the project. Speculative projects, such as high-speed rail service, are not a part of the proposed mitigation. SEA recognizes the need for comprehensive mitigation, but believes that the proposed mitigation adequately and specifically responds to potential impacts and ongoing safety concerns related to the proposed project and DM&E operations.

Factor: F01I-Alternatives - Sidings

6

Restatement 008057 9

One commenter indicated that one of the maps associated with the proposed Rochester bypass shows five sidings in Olmsted county spaced at 12 mile intervals and assessed that there was no explanation for this closely spaced siding configuration in the Draft EIS. The commenter stated that the only useful purpose for five sidings evenly spaced in Olmsted County is if the Applicant intended to double the proposed number of sidings in order to double the number of trains that the track could accommodate in a day. This commenter asked for an explanation of the proposed siding plan and stated that the Draft EIS did not evaluate alternate siding locations, including sidings on the potential Rochester Bypass. The commenter also said that 30 mph train traffic on the sidings indicate that the sidings will not be "high speed" as the Draft EIS states.

Response

Rail sidings would be constructed within the DM&E right-of-way. Chapter 4 of the Draft EIS included an evaluation of the potential environmental impacts of construction within the DM&E right-of-way, including rail sidings. SEA also included an evaluation of the transportation and safety impacts for rail sidings in the respective evaluations in Chapter 4 of the Draft EIS. SEA includes the specific locations of the sidings in Appendix I of the Final EIS.

In response to the comment regarding sidings on the Rochester bypass, because SEA is not recommending bypasses as mitigation for the environmental impacts, no sidings will be located along the bypass.

As discussed in Chapter 1 of the Draft EIS, trains would slow to approximately 40 miles per hour when operating on rail passing sidings.

Factor: F02D-Analysis - Mitigation

50

Restatement 000244 8

Several commentors stated mitigation measures must be paid for entirely by the railroad DM&E and not the public through tax dollars. Such mitigation costs must be factored into the viability of the project and left for DM&E to include in their cost. DM&E must pay all the externalities of this project and operating this proposed unit coal train. Citizen tax money should not go to buying the real estate, building the over/under passes, and crossing improvements. In addition, individuals/communities along the coal line must be compensated for their losses. DM&E must be made to bear the cost of mitigating noise, vibration, traffic, and safety problems that are created by the expansion including the cost of a bypass. The U.S. Department of Transportation policy states to reduce the social costs of environmental degradation and to ensure that these social costs are more accurately reflected in the price of transportation services. If DM&E is not willing or able to pay full cost of mitigation measures required the project should be denied. A full and complete mitigation plan should be part of the Final EIS in order to quantify fully the impact and cost for each action alternative. Other commentors indicated the Draft EIS reveals that SEA failed to assess the individual and cumulative costs of the imposition of its proposed environmental mitigation on the overall viability of the project. Financial costs incurred by the DM&E for reconstructing the in city route and associated mitigation features under any scenario will most certainly exceed the total costs of constructing the bypass and related

Similar

mitigation. Indeed, the expenditure of \$34 million of probable costs of mitigation under Alternative B-2 will not assure acceptable mitigation of the adverse impacts of Alternatives B-2. State and local governments should not be responsible to pay for mitigation for a private project with inherent benefits to the communities it passes through

One commentor states this is not a new problem. Nearly a century ago, Chicago, the then railroad capitol of the world required railroads to build elevated tracks and treaties to minimize their impact on the city and its citizens. The expense was paid for by the railroads. This sound precedent can be applied here. The DM&E should pay for elevated tracks and crossing improvements, it should also be required to cushion its tracks to minimize vibration to current property owners.

One commentor states a scenario has surfaced that suggests DM&E could save money on construction costs, build a lighter duty railroad if they specialized in returning empty trains to the PRB while the full trains could go on the existing up and BN trackage. This is a bit unlikely but the tonnage milestones should be changed to trains so the belated safety provisions of local community agreements could kick in.

One commentor indicates Rochester is a wealthy city. If the bypass is done, Rochester should have to pay the cost. Other mitigation such as evaluated tracks, or more under/overpasses, sound deadening, etc. should be considered before a bypass. Costs to mitigate the impact on Rochester if the rail line goes through the city should be split between DM&E and Rochester.

One commentor states the financial costs incurred by the DM&E for reconstructing the in city route and associated mitigation features under any scenario will most certainly exceed the total costs of constructing the bypass and related mitigation. The expenditure of 34 million of probable costs of mitigation under Alternative B-2 will not assure acceptable mitigation of these adverse impacts of Alternative B-2.

Response

A detailed discussion of mitigation is provided in Chapter 12 - Mitigation of this Final EIS. the negotiated agreements between the Applicant and the communities specify the financial responsibility of each party for improvements and mitigation. Additionally, SEA's recommended mitigation specifies mitigation for which the Applicant should be responsible. Cost considerations are also presented in the narrative provided in Chapters 4 through 9 of this Final EIS. Cost figures are estimated for each of the alternative build scenarios.

The project was determined to possess financial viability by the Board as previously documented in Appendix A of the Draft EIS.

Construction of elevated rail was not considered viable for the type of freight on the DM&E line. In some cases, elevated track can exacerbate problems (noise, visual impact, etc.). The Applicant will be responsible for many of the crossing improvements associated with the proposed project. Likewise, use of competitor rail line was not considered feasible for the proposed project.

Chapter 9 of this Final EIS provides additional analysis - including cost comparisons - of the in-city and bypass routes for the Rochester area. SEA has not recommended a bypass of Rochester for this project.

Factor: F01K-Alternatives - Missouri River Bridge

0

Restatement

001779

8

One commenter indicated a concern that the existing train bridge crossing the Missouri River at Pierre is incapable of handling additional rail traffic. The commenter stated that the bridge is very old and that it would be an environmental disaster if the bridge collapsed into the river. The commenter suggested that it would be beneficial to both DM&E and the community of Pierre/Ft. Pierre if DM&E constructed a new bridge several miles downstream where there is no concern for stability and where navigation

around fishermen and recreational boaters would not be an issue.

Response

Chapter 2.2.9 of the Draft EIS addresses the Missouri River Bridge and acknowledges the inability of the existing bridge to support increased train traffic. The Draft EIS stated that DM&E believes it may be possible to reinforce the existing bridge to allow for safe operation of trains. However, because of the need for additional studies, DM&E developed a second alternative that would include construction of a new bridge across the Missouri River, just upstream of the location of the existing bridge. SEA evaluated the potential environmental impacts of both alternatives. Chapter 2.2.9 includes a discussion of the alternatives for the Missouri River Bridge.

In response to the suggestion that DM&E should build the bypass and construct a new bridge downstream, SEA has determined that the existing route through Pierre, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project (see Chapter 5 of this Final EIS).

Factor: F02D-Analysis - Mitigation

0

Restatement 007754 8

The commentator states the draft EIS fails to mention the need for overpasses or the need for other mitigation measures to address the effects that the proposed DM&E coal train expansion project would have on the City of Winona. Under Federal Regulation, the STB must, include appropriate mitigation measures.

Response

Appropriate mitigation measures are included in Chapter 12 of this Final EIS. SEA considered the potential impact of train traffic to intersections and determined that the Winona area did not meet the criteria for an overpass.

Factor: F03D-Process - STB policy, process

2

Restatement 007758 8

One commenter threatened to sue the Board in a class action lawsuit if DM&E' proposed project adversely affects private property. The commenter said the Board would have to fund replacement value for "home, my memories, and quality of life loss, and the complete disruption of my lifestyle," and mitigation would not be accepted. Another commenter said the poor quality of the Draft EIS could subject the Board to litigation.

Response

One of the most important goals of the environmental review process is to develop appropriate environmental mitigation to eliminate or minimize the effects of railroad construction proposals on affected communities. The Board also encourages railroads and affected communities to negotiate mutually acceptable agreements to resolve potential environmental issues because negotiated agreements often contain more far-reaching solutions than environmental mitigation the Board unilaterally could impose. (Here 50 of the 56 communities at issue negotiated agreements with the railroad, and SEA is recommending in the Final EIS that the Board impose a condition on any decision granting final approval to the PRB Expansion Project requiring DM&E to comply with the terms of the negotiated agreements.) Lastly, compensation for any taking of property as a result of this, or any other rail construction, is available in the event of an eminent domain or condemnation action.

Factor: F02E-Analysis - Results

2

Draft EIS to compel the DM&E to respond to the issues raised about the proposed M-2 route and to allow for public comment about that route.

Response

SEA believes that the Draft EIS and the Final EIS follows the procedural requirements of NEPA and adequately analyzes the potential impacts of the proposed project. This Final EIS has attempted to respond to concerns raised during the comment period. Chapter 7 of this Final EIS specifically discusses impacts related to the Mankato area.

Factor: F01E-Alternatives - Pierre Bypass 12

Restatement 000150 7

Commenters supported a route bypassing Pierre citing several reasons. Commenters stated that the economy of Pierre is dependent on state government and tourism and both would be adversely affected by additional train traffic. Another commenter stated that the division of the city by the railroad would force Pierre to expand the law enforcement budget 33%, thus reducing funds for other city services. Increased rail traffic could also cause unnecessary delays and environmental impacts for residents of Pierre. Commenters indicated concern that noise disturbances would be disruptive to private residences, hotels, businesses, and schools.

One commenter also stated that the bypass proposal offered by Pierre would shorten the distance traveled by trains in the area.

Response

In response to the public comments regarding the Pierre Bypass, SEA completed an evaluation of the Pierre Bypass Route at the same detail as the evaluation of bypass alternatives for other communities. As described in Chapter 5, SEA determined that the existing route through Pierre, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the proposed project. Chapter 12 describes SEA's recommended mitigation for the environmental impacts of the proposed project through Pierre, including noise and safety.

Factor: F02D-Analysis - Mitigation 0

Restatement 000227 7

The commentator states there are generally inadequate requirements with much depending on the good will and "environmental sensitivity" of the Applicant. For such a major project and with the limited resources that DM&E presently has, there will be much pressure to cut corners. In fact, the Applicant will have every incentive to minimize costs and therefore, mitigation, wherever possible in order to compete with UP and BNSF.

Response

SEA directs the reader to Chapter 12 of this Final EIS and a discussion of the oversight responsibilities of the Board in the mitigation process. SEA believes DM&E understands that it is in the best interest of DM&E to adhere to the mitigation measures that are proposed.

Factor: F02D-Analysis - Mitigation 14

Restatement 001523 7

Several commentator stated that the Draft EIS contained vague terminology. The following examples were provided:

Similar

1. The Draft EIS recommendations use the word "consult" as the operand in their recommendations as opposed to "shall". The commenter believed "consult" to be essentially meaningless, and that it implied no responsibility to actually implement any suggested action where consultation is suggested.
2. "In Chapter 7, the agency's proposed mitigation is composed primarily of exhortations to follow existing law, make plans, and consult with various people and agencies. Words like "reasonable" and "adequate" and "where appropriate" are not defined.
3. The Board did not suggest or require specific mitigation measures for DM&E to meet, and for public comment. Rather, vague words and suggestions like "DME and comminutes will negotiate or work out mitigation agreements" were used. The commenter was also concerned with statements like: "encourage DME to communicate with concerned residents and affected communities and use community input to develop voluntary mitigation and agreements," "encouraged DME to negotiate mutually acceptable agreements with affected communities and other government entities.... including ways to share the costs associated with project related environmental mitigation measures. Negotiated agreements could be with neighborhoods, communities, counties, cities, regional coalitions, states and other entities." Furthermore, in numerous locations on mitigation phrases like "take reasonable steps to implement adequate measures to minimize the potential for these to occur," "minimize damage to paleontological resources...consult with affected communities...." These are not acceptable.
4. The list of proposed mitigation measures in Volume IV, Section 7.7 are vague and generic.
5. Page ES-86 states applicants shall inspect temporary construction fencing regularly and promptly repair any damage. The mitigation is too vague, "regularly" and "promptly" must be quantified to effectively mitigate the problem caused by the proposal.
6. The mitigation section is peppered with words like "shall consult," "properly maintain" "to the "...be guided by Land Owners Advisory Board". It may be an indenting problem, but we don't know who the air quality working group is, nor how they will reach "recommendations" about very real air quality concerns in Olmsted County.
7. Oversight and enforcement provisions of the mitigation package need to be more clearly defined. Overall, the mitigation measures are too vague, to the point they are unenforceable. The utilization of third party environmental inspectors is essential. The mitigation section should more clearly define the inspectors' role and authority. The Federal Energy Regulatory Commission has an exceptional system of environmental inspectors and BMPs in place for pipeline projects and we propose that their system be adapted for use on this project.
8. There's only 28 pages out of 5,000 dedicated to mitigation. Giving the initial impression that the STB was not serious about seeking solutions to neighbors very real concerns. It is loaded with words such as "to the extent possible" or where practicable" or "where appropriate" or shall attempt" or "shall consult" or "shall work with" that shifts responsibility from DM&E. There is no criteria, no accountability, the neighborhood would be left virtually powerless against the railroad.
9. Rochester seeks clarification of proposed condition 103.

Response

SEA conducted an extensive analysis pertaining to each individual resource potentially impacted due to the proposed project. Detailed results are discussed within the appropriate sections of the text; and are then summarized to reduce duplication. In addition, due to the wide scope of the proposed project, a variety of cooperating agencies are involved. In order for SEA to compliment the numerous required needs of this wide range of agencies, it became necessary to include terminology that best represented the needs of all the cooperating agencies involved. Chapter 12 of this Final EIS provides a detailed narrative of the roles and responsibilities of the Applicant, the Board, and other groups (e.g., agencies, communities with negotiated agreements). The language used in this chapter reflects the conditions and recommendations set forth for mitigation.

11/15/2001

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0

Factor: F02E-Analysis - Results

Restatement 000527 6

One commentor stated DM&E has not been honest regarding the impact of the proposal. The Draft EIS did not address the true impact to the environment in Custer County. It is unclear how a private business like DM&E can destroy a private business like a ranch.

Response

SEA believes that the analysis supporting the conclusions presented in the Draft EIS was conducted in an honest and open manner. The concern for the property in question should be negated due to SEA's determination that a Bypass of Pierre is not a preferable alignment. There will be no impacts to the ranch identified in this comment.

Factor: F02D-Analysis - Mitigation

0

Restatement 001720 6

The commentor states the Draft EIS general lacks specific criteria that DM&E will be required to meet in mitigation measures.

Response

Chapter 12 of this Final EIS provides the detailed criteria of mitigation on a resource-by-resource basis. The proposed mitigation is prefaced by a discussion of the roles and responsibilities of the Board and the Applicant for the mitigation process.

Factor: F01G-Alternatives - Rochester Bypass

0

Restatement 007556 6

One commentor stated that cases, such as Idaho Pub. Util. v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994), have viewed the Board's practice of imposing consultation conditions as insufficient mitigation, so the consultation conditions in the Draft EIS cannot be considered as adequate mitigation.

Response

SEA's recommended mitigation for the proposed project is far-reaching and goes well beyond consultation conditions. In Idaho Pub. Util. v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994), the court faulted the Board's predecessor agency, the ICC, for simply imposing environmental conditions that required subsequent consultation and permitting by other agencies in lieu of the ICC undertaking its own analysis. In this case, however, SEA has taken the requisite hard look at the environmental consequences of DM&E's proposed project, has issued an extensive and comprehensive EIS, and has developed extensive mitigation measures in response to the data collected. Unlike Idaho, the consultation conditions recommended here were imposed after SEA had itself taken the requisite hard look at potential environmental impacts. There has been no improper delegation to other agencies in this case.

Factor: F02D-Analysis - Mitigation

0

Restatement 007556 6

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Factor: F03D-Process - STB policy, process 0

Restatement 007556 6

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Factor: F02D-Analysis - Mitigation 0

Restatement 007701 6

One commenter stated that the consideration the City should receive in return for "supporting the project" is DM&E payment for four quadrant intersection gates. Two of the city street intersections slated for such gates don't intersect with DM&E tracks. They intersect with the IMRL.

Response

SEA considered the need for grade separated intersections for each major intersection. SEA determined that the traffic levels did not meet the criteria for a grade-separated interchange in Owatonna. For a more detailed description and analysis, please refer to the discussion of Owatonna in Chapter 8 of this Final EIS.

Factor: F03B-Process - NEPA Compliance 6

Restatement 007537 63

One commenter said adoption of the Mankato, MN southern route, known as Alternative M-2, would lead to grave environmental consequences, greater than Alternative M-3, through town over the existing right-of-way, so adopting this alternative would violate NEPA. Other commenters recommended that SEA prepare a separate Draft EIS for the M-2 route and then have a thirty-day comment period on it, in order to allow the public to evaluate the Mankato alternatives properly.

Response

SEA believes consideration of the Mankato alternatives has been adequate. The Draft EIS thoroughly addressed the Mankato alternatives in Section 3.3. The Final EIS contains additional analysis and discussion of these alternatives in Chapter 7.

The fact that the Mankato southern route allegedly would have more severe environmental impacts than the M-3 alternative does not preclude SEA from recommending that alternative, or the Board from approving it. While NEPA requires the Board to take a hard look at the environmental consequences of proposals to construct new rail lines, it does not mandate a particular result. Thus, once the adverse environmental effects of a proposal have been adequately identified and evaluated, the Board may conclude that other benefits outweigh the environmental harm of a particular alternative.

Factor: F03D-Process - STB policy, process

4

Restatement 008052 5

One commenter said the Board paid too much attention to a vocal minority, since the majority of affected communities favor the project and only a few have opposed it. According to the commenter, the Draft EIS neglected to provide enough detail on the advantages of the project, such as the benefits of using low-sulfur coal. One commenter recommended that the Final EIS contain a separate section outlining the project's benefits. The commenter said, although the Draft EIS contained a discussion of the project's benefits in the "no-action alternative section," the information on the beneficial impacts of the project should be pulled out into a separate section.

Response

The Board's environmental review process is an open process that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and the broadest possible participation in the process. SEA prepared the Draft and Final EIS to identify and evaluate potential environmental impacts of the DM&E proposed rail line construction and operation to coal mines in the Powder River Basin and to inform Federal, state, and local agencies, affected communities, Native American Tribes, and the general public about the project, its potential environmental effects, and how best to mitigate some of the potential environmental impacts. The Draft EIS detailed the purpose and need for DM&E's proposed project in Chapter 1. The Final EIS contains additional discussion, addressing the purpose and need for the project in detail in a separate chapter, Chapter 2.

Factor: F02F-Analysis - Thresholds/Significance Criteria

0

Restatement 003152 5

The commentator states a table summarizing the impacts of each alternative for easy comparison would be appreciated. Pages ES-221 contains a table that is of little consolation, rating impacts from not significant too highly significant. Show the numbers and explain how the thresholds were determined.

Response

SEA conducted an extensive analysis of each individual resources for each alternative. Findings were illustrated throughout the Draft EIS in both tabular as well as textual format to provide simplicity, as well as detailed explanations. Potential impacts to each resource are discussed in the appropriate section of the Draft EIS for all the alternatives. As appropriate, comparisons of the EPA threshold standards and potential increase due to the impacts of the proposed project are illustrated and explained for each relevant issue in the corresponding sections of the Draft EIS. Discussions were then summarized to reduce the likelihood of redundancy in the text.

Factor: F01G-Alternatives - Rochester Bypass

0

Restatement 007556 5

The commentator states the Draft EIS is erred in calculating both the environmental impacts of DM&E's current operations and the environmental consequences of DM&E's proposed operations. Any STB order approving the DM&E project based on a faulty environmental review could be affirmed by a reviewing court.

Response

SEA has made every effort to accurately characterize the existing conditions and impacts of the proposed action on the natural and man-made environment. Additionally, SEA has used the public review of the Draft EIS to identify areas where additional evaluation was needed. This added information is presented in this Final EIS.

Factor: F02A-Analysis - Data Accuracy

0

Restatement 007556 5

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Response

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Factor: F02D-Analysis - Mitigation

0

Restatement 007556 5

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Response

SEA has made every effort to accurately characterize the existing conditions and impacts of the proposed action on the natural and man-made environment. Additionally, SEA has used the public review of the Draft EIS to identify areas where additional evaluation was needed. This added information is presented in this Final EIS.

Factor: F03B-Process - NEPA Compliance

4

Restatement 007625 4

One commenter said the Winona Harbor barge loading facility should have been looked at in the Draft EIS, since DM&E plans to transload coal to barge. Although SEA decided that the barge traffic was not reasonably foreseeable, the commenter disagreed. The commenter said DM&E's application to the Board stated its intention to ship coal to the Mississippi River, and Appendix 2 of the application stated that 3 of the 6 core market areas could be served by transloading coal to barge. Also, the DM&E website lists the Mississippi River as one of the target markets for the project, and the barge traffic would be a connected action to the project under 40 CFR 1508.25.

Other commenters said that the determination of reasonably foreseeable actions to be included in the Draft EIS appeared to be arbitrary. In addition to the barge traffic of coal, the Draft EIS did not consider where the coal would go after Winona, MN. Also, since Rochester, MN falls into the no growth category for air emissions, DM&E's project could impact future pollution-producing projects in the area.

Response

NEPA requires analysis of actions that are reasonably foreseeable as part of the proposed project, but does not require analysis of actions that are speculative. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on other rail lines or barge facilities could not be determined because the analysis would be based on speculation of possible routes to potential customers. Additionally, based on information from DM&E concerning potential impacts to barge traffic from DM&E's anticipated rail operations, it appears that barge loading facilities currently available could not accommodate unit coal trains of the type DM&E would be operating. Thus, projections of potential coal volumes to be transported by barge are dependent on the development of facilities capable of loading barges from unit coal trains. Should a barge facility be developed, it would likely require an environmental review under NEPA. Such a review would likely require evaluation of increased barge traffic on the river.

The Draft EIS analyzed potential impacts on air quality and concluded that all air emissions from the proposed project would have a negligible effect on Rochester, MN. The air emissions from the PRB project in the Rochester area would be insignificant compared to current emissions, and would virtually have no effect on the ability of future projects in the Rochester area to increase air emissions.

Factor: F02D-Analysis - Mitigation 0

Restatement 007557 40

The commentator states the conditions that MN/DOT requests will allow the affected communities, state and Federal agencies to adequately address the potential impacts of the PRB project with full knowledge, prior to receiving approval from the STB.

Response

SEA has considered a wide-variety of suggested conditions that should be placed on DM&E for this proposed project. Suggested conditions were received by citizens and agencies. Chapter 12 of this Final EIS provides SEA's proposed mitigation measures for the project and the conditions, including reference to the negotiated agreements, by which these measures can be imposed.

Factor: F03B-Process - NEPA Compliance 26

Restatement 000313 4

Commenters stated that the Board lacked the authority to require DM&E to construct bypasses around cities as mandatory mitigation conditions on its approval of DM&E's project. The commenters said that the Board did not have the authority to place conditions upon activities connected to the proposed rebuild, and only had jurisdiction over the proposed new construction.

On the other hand, the commenters state that even if the Board has the authority to impose the city bypass conditions, such action would contravene existing laws. According to the commenters, carrying out bypass conditions would require DM&E to file additional applications with the Board, because the bypasses would be new construction cases, requiring separate Board approval before implementation. The commenters state that placing bypass conditions on the current construction would make little sense, because the Board would have to independently evaluate each bypass proposal as a new construction case. Also, the Staggers Act prevents the Board from directing the amount and type of traffic DM&E can move over its rail lines. Thus, the commenters state that even if the bypasses were built, the Board could not force DM&E to utilize the bypasses.

Response

As the Draft EIS and this Final EIS explain, this EIS addresses the existing line, as well as the Extension Alternatives because the increase in operations over the existing line would not occur but for the new construction project and the cooperating agencies need information on the existing line to undertake their decisionmaking process.

SEA has properly considered the bypasses as part of its environmental review in this case. NEPA requires the Board to take a hard look at the environmental consequences of its decisions, and the responsibility to consider reasonable and feasible alternatives to a proposed transaction is at the heart of the NEPA analysis. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 194 (D.C. Cir), cert. denied, 502 U.S. 994 (1991); 42 USC 4332(2)(E). Reasonable and feasible alternatives to a construction proposal are defined as alternatives that would satisfy the railroad's objectives but might be environmentally preferable to the route that the railroad originally proposed. Such an alternative could include a bypass.

Congress also gave the Board broad authority to modify rail construction proposals and impose conditions on the Board's approval of a proposal. 49 U.S.C. 10901(c). The Board can impose conditions, including conditions designed to mitigate environmental impacts, so long as they are supported by the record, there is a sufficient nexus between the condition imposed and the transaction before the Board, and the condition is reasonable. See United States v. Chesapeake & O. Ry., 426 U.S. 500, 514-15 (1976); Consolidated Rail Corp. v. ICC, 29 F.3d 706, 714 (D.C. Cir. 1994). In rail construction cases, the Board typically has used its conditioning power to impose conditions such as grade crossing protection, erosion control, reseeding and revegetation of disturbed areas, and advanced notification of train schedules to emergency service providers. But additional types of mitigation – including ordering a bypass – could be found to be reasonable if necessary to remedy a severe problem resulting from the proposal itself.

In short, the Board has the authority to require a bypass, where reasonable, as an environmental mitigation condition. Should the Board do so, its order imposing a bypass condition on its approval of a construction proposal would constitute Board authorization for the bypass. Whether some additional public notice and opportunity for comment would be needed in such a situation would depend upon whether the public review and comment obtained through the environmental review process had sufficiently addressed the bypass.

Factor: F02E-Analysis - Results 0

Restatement 007686 3

The commentor states several members of our committee have reviewed at least portions of the Draft EIS. The commentor found omissions and inaccuracies that have the net effect of dramatically understating the environmental impacts to Rochester and Olmsted County. There is a problem with the way noise, air pollution, and automobile traffic impacts are described. Significant improvements of the Draft EIS will be necessary for the true magnitude of impacts of this project to be clearly presented in the Final EIS.

Response

SEA directs the reader to Chapter 9 of this Final EIS. SEA has included additional narrative to address specific concerns of Olmsted County and the City of Rochester, including karst topography and emergency response vehicles.

Factor: F02E-Analysis - Results 0

Restatement 007700 3

Several commentors stated that SEA already decided that Alternative C is the preferred alternative and refuting information pointing to other alternatives is downplayed as unimportant. The conclusions in many cases do not follow the information presented. NEPA states that "EIS shall serve as a means of assessing the environmental impact of the proposed agency actions, rather than justifying decisions already made." The Draft EIS is one long litany of justifying Alternative C.

Response

SEA believes that it has conducted a fair and impartial analysis of the potential impacts of the proposed project. The involvement of other resource agencies, as either cooperating agencies, review agencies, or both has helped to keep the impact analysis focused on resources of special regional and state concern. SEA's recommendations in this Final EIS reflect the thoroughness of the evaluation and the input not only of concerned agencies but also citizens within the project area.

Factor: F02D-Analysis - Mitigation 0

Restatement 007747 3

The commenter stated concerns for the crossing upgrades along the route, and expenses for their construction. The dwelling and businesses located along the tracks were placed there long after the tracks were laid, and should not expect remuneration for additional traffic. One business located in Goodview abuts the CP Main line and with the welded rail systems passing rail traffic is hardly noticed.

Response

Chapter 12 of this Final EIS provides the proposed grade separations for this project. Cost of these improvements may be shared through negotiated agreement or paid by the Applicant.

Factor: F02D-Analysis - Mitigation 0

Restatement 007758 3

The commentator states the City of Brookings did not negotiate with property owners therefore no mitigation measures will be accepted.

Response

Impacts and proposed mitigation for the Brookings area are discussed in Chapter 6 of this Final EIS. As of this writing, no negotiated agreement exists between Brookings and the Applicant.

Factor: F03D-Process - STB policy, process 22

Restatement 000161 30

Some commenters questioned DM&E' financial situation and its need for the proposed project.

1. DM&E' Finances

A commenter inquired as to DM&E' current profits and said that the railroad' goal is to profit at the communities" expense. Another commenter said that having communities pay DM&E for mitigation measures would be unfair.

A commenter stated that the Board should not rush the environmental review process to accommodate DM&E. If DM&E cannot bear the financial burden of the environmental review process then the Board' earlier findings should be re-examined, because the Board found DM&E financially fit to apply for the project. Another commenter said DM&E' finances appear suspicious, since DM&E applied to FRA for \$100 million and rumors circulate that DM&E is trying to refinance its loans.

2. DM&E' Need for the Project

One commenter said DM&E' entire plan to build a new corridor did not make sense and that DM&E should just use its existing corridor. DM&E' project seemed to be just a show of its power, according to the commenter. DM&E' statement that without the project the railroad would cease to exist appears to be a threat, according to one commenter. Also, the analysis of the no-action alternative in the Draft EIS at ES-22, ES.8.1 relies on information from DM&E, making the section biased. But one commenter said without project approval, DM&E could not become competitive in the market place.

3. DM&E Has an Unfair Advantage over Citizens

Some commenters stated that they believed DM&E had too much power in the situation. One commenter complained that DM&E had more money and political support and that citizens' efforts to protect the environment would prove to be futile.

Another commenter stated that the entire proposal appeared to be too ambiguous and that the upgrade should be denied because of the adverse effects on property values. A commenter also said that since the public has not been given the chance to view DM&E' application and amendments completely, confusion as to the real nature of the project remains.

Response

1. DM&E's Finances

The Board's processing of this case has been appropriate. While the Board found that DM&E had satisfied the transportation aspects of 49 U.S.C. 10901 in December 1998, the Board will not issue a final decision on DM&E's project until completion of the environmental review process. The Board is aware of its responsibility to balance the need to move forward with the need to meet its obligations to ensure a thorough, adequate and legally sound environmental review under NEPA and related laws.

2. DM&E's Need for the Project

Chapter 1 of the Draft EIS discussed the purpose and need for DM&E's proposed project. DM&E's proposed project would extend DM&E's existing system westward into the PRB region of Wyoming, allowing DM&E to connect to coal-producing mines in the region. Construction and operation of this project would provide additional rail carrier access to the region and facilitate transport of coal eastward from the mines over DM&E's existing system. The Board, in its December 10, 1998 decision, indicates the No-Action Alternative could result in DM&E ceasing to be a viable railroad. In addition to the discussion in the Executive Summary at ES-22 to ES-24, the various chapters of the Draft EIS addressed the effects and impacts of the No-Action Alternative for each of the project components.

3. DM&E Has an Unfair Advantage over Citizens

To meet its responsibilities under NEPA and related environmental laws, the Board must consider potential beneficial and adverse significant environmental impacts in deciding whether to approve a construction as proposed, deny the construction, or approve it with conditions, including environmental conditions. Also, the Board's environmental review process is an open process that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA relies on applicants for operational data and project-specific information that only the applicant can provide. SEA conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS responds to all comments, which also are made public. The NEPA process ensures that agencies make informed decisions that evaluate the environmental consequences of a proposed

action. As stated in the Council on Environmental Quality's regulations implementing NEPA at 40 CFR 1500.1(c) "[t]he NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment."

Factor: F02D-Analysis - Mitigation

0

Restatement 003809 30

One commentor stated that the Executive Summary shows an incomplete list on Page ES-87, No. 33. The commentor stated that should the projects go forward, the Applicant should be responsible for applying the Land Use Mitigation Policy and Plan to the displacement of homes and residences, as well as businesses that depend on the use of the land.

Response

SEA has conducted an analysis of impacts to homes and businesses as part of this EIS. Land takings will be minimal due to the fact that SEA has recommended no bypasses that will destroy agricultural or open land. In addition, most impacts to businesses will be temporary in nature during construction. Some businesses will experience temporary access problems. Impacts to residences are expected to occur from noise. DM&E will work with any residents and business owners to reach fair settlement for any takings.

Factor: F03E-Process - Cooperating agencies policies, processes

3

Restatement 007546 306

Commenters asked for more specific information on Federal preemption of state and local environmental regulations. One commentor pointed out that local land use plans may conflict with Federal plans, and according to NEPA, the EIS should state how the Board will coordinate Federal and local land use plans.

Response

State and local railroad regulation has long been preempted to a significant extent. In the ICC Termination Act, Congress broadened the express preemption provision at 49 U.S.C. 10501(b), so that both "the jurisdiction of the Board over transportation by rail carriers" and "the remedies provided under [49 U.S.C. 10101-11908] are exclusive and preempt the remedies provided under Federal or State law." Enactment of this broad preemption regime is intended to facilitate and expedite the railroads' ability to proceed with freight rail infrastructure projects (whether they need the Board's approval or not) and perform their railroad operations efficiently. For example, under court and Board precedent interpreting the statutory preemption provision, it is clear that state and local regulation cannot be used to veto or unreasonably interfere with railroad operations. See Joint Petition for Declaratory Order - Boston and Maine Corporation and Town of Ayer, MA (Served May 1, 2001). In addressing the scope of section 10501(b), the courts have found that state and local permitting or preclearance requirements (including environmental requirements) are preempted because, by their nature, they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations. The courts also have concluded that zoning ordinances and local land use permit requirements are preempted. *Id.* However, not all state and local regulation is preempted. State and local regulation that does not interfere with interstate rail operations, such as building and electrical codes, is permissible. *Id.*

In cases that require regulatory approval from the Board and environmental review under NEPA, the Board encourages state, local and Federal agencies to provide input during the environmental review process. In particular, agencies can ask that the Board impose environmental conditions requiring the railroad to comply with state or local permitting requirements, which the Board does where appropriate. See generally *City of Auburn*, 154 F.3d 1025 (9th Cir. 1998).

Factor: F02D-Analysis - Mitigation

0

Restatement 006454 31

The commentator indicated that page ES 91 of the Executive Summary noted the text that referred to, in part, "all federal, state and local permits required by the Corps of Engineers." The commentator stated that DENR also needs to be contacted concerning the need for permits that may not be required by the Corps.

Response

SEA acknowledges the comment and notes that the Applicant should also contact the South Dakota SENR for coordination with any permitting activities in the State.

Factor: F02D-Analysis - Mitigation

0

Restatement 006454 32

The commentator states in addition to the agencies mentioned on page ES 91 of the Executive Summary, DENR should be consulted concerning best management practices.

Response

SEA acknowledges the comment and notes that the Applicant should also coordinate with the South Dakota DENR on permitting and best management activities related to construction and operation of the DM&E in South Dakota.

Factor: F02C-Analysis - Methods

13

Restatement 007546 326

Several commentators provided comments on the environmental impacts of the proposed DM&E project. Commentors noted the Draft EIS underestimates the extent to which the project worsens the existing conditions. While there is recognition that the rail bed grade construction is a permanent impact there has been no effort in the Draft EIS to disclose the range of environmental impacts that are known to have occurred, nor is there any effort to predict or manage the expected environmental impacts of the project.

Other commentators indicated numerous new and different formulae for traffic delays, noise and vibration were used for this project that have not been used by the STB in previous actions. The clear results of these "novel formulas" is that there was no impact found when any kind of common sense would show that there will be many different impacts. The economic impacts provided by DM&E and referenced numerous times in the Draft EIS (Ex. 4.3.16.3) are for 40 MNT and 100MNT. In addition, the Draft EIS masks the relative impacts of R-2 and R-4 by simply using words such as "noise" and "traffic delays" as between R-2 and R-4 must include, inter alia, the numbers of cars, school buses, emergency vehicles, people, and businesses that will be affected by these alternatives. The Draft EIS should provide the actual and current figures for 20 MNT and 50 MNT. The Draft EIS uses different standards in different states to determine if there will be traffic "impacts". This leads to the conclusion that Wyoming will be impacted on its low volume roads but Minnesota will not be "impacted" on its urban high-density corridors. The Final EIS should reflect DM&E's maintenance windows in noise calculations. Unlike typical operating proposals, the DM&E states that its coal train will operate "in set time slots." As DM&E puts it, "If a train is not ready to move from a staging yard when a slot is available, it will wait for the next scheduled slot. Consistent with this approach, DM&E states that "The operating plan provides for up to 4 maintenance windows, of up to 6 hours each..." These facts are relevant to the noise issue because of the use of the day-night sound level (Ldn) to measure noise impacts. The Ldn methodology requires increasing all nighttime A-Levels (between 10 p.m. and 7 a.m.) by 10 decibels. Thus, if DM&E's maintenance windows require DM&E to increase the percentage of its nighttime operations, then the Ldn will increase. And if, the Ldn increases, the distance between DM&E's tracks and any particular dB level also will increase. And, as the distance increases, the number of sensitive receptors affected by that level of noise also would increase. On information and belief, the 65 and 70 dBA contours shown in Table F-6 assumes that DM&E's operations will be evenly spaced throughout the day. This means that 9/24ths (37.5%) of the movements are assumed to occur at night. However, as demonstrated in Wheeler, Exhibit 11, of the 24

possible maintenance time distributions, 14(58.3%) result in higher than average nighttime traffic. This means that the Draft EIS has understated the Ldn and has understated the number of sensitive receptors that would be affected by DM&E's operations.

One commentor stated while the Draft EIS contains a full and detailed discussion of the Project's negative environmental impacts, the failure to consider the benefits frustrates the goals of NEPA: "[i]n order to fully appraise the potential environmental harms of a proposed project, they must be weighed against the economic benefits of that project." *South Louisiana Environmental Council, Inc. v. Sand*, 629 F. 2d 1005, 1011 (5th Cir. 1980). Therefore, the Draft EIS should detail the environmental benefits of the Project to allow the decision makers to properly balance the Project's positive and negative impact. The DM&E Project is a somewhat unique development project in that it does in fact generate many environmental benefits. Therefore, the Final EIS should provide an analysis incorporating the following national and regional benefits together with the economic data provided by DM&E, as well as data compiled independently by the SEA, and weigh these benefits against the potential environmental impacts of the Project.

Response

SEA recognizes the potential environmental impacts as noted in the appropriate chapters. All aspects pertaining to potential environmental impacts have been assessed and recommended mitigation efforts have been prepared (please see Chapter 12 of this Final EIS). This Final EIS also addresses the environmental impacts that were determined to require additional analysis due to comments on the Draft EIS or additional information.

The methodology used by SEA when obtaining the data is consistent with past cases, as reported in the methodology portion (Appendix D) of the Draft EIS. As explained in Section 4.3 of the Draft EIS, the 40 MNT and 100 MNT levels of operation are both included in the analysis since the increase in operations would require construction of additional facilities that would increase the value of DM&E property within each county. Because they would be subject to the market, both levels of operation are presented for comparison and are a more accurate reflection of the potential long-term tax impacts.

In addition, SEA conducted an analysis regarding A-levels by considering train events between 10 p.m. and 7 a.m., equivalent to 10 such events. SEA cannot predict maintenance simply because it would vary considerably and would likely require only minimal redistribution of trains, thus overall noise levels should not be significantly affected. Finally, terms used throughout the Draft EIS have been summarized to reduce duplication in the text discussion.

SEA discussed beneficial as well as adverse impacts that may potentially occur as a result of the proposed project. Further analysis will be conducted with regards to cumulative impacts as discussed in Chapter 10 of the Final EIS.

Factor: F01L-Alternatives - No-action Alternative

Restatement 000069 28

Many commenters supported the "No-Action" alternative because of environmental impact, loss of land, inequity to Indian Reservations, sufficiency of current transportation system, lack of notification and inadequacy of the Draft EIS. Commenters indicated that the analysis of the No-Action Alternative in the Draft EIS is biased and too heavily based on information provided by a single source in favor of the project. One commenter pointed out that if DM&E has applied to the FRA for maintenance money then the portions of the Draft EIS that deal with the possibility of DM&E going out of business, if the No-Action Alternative is chosen, need to be revised. One commenter supported the No-Action Alternative but suggested modification to allow DM&E access to the Powder River Basin and reconsider the Wyoming portion of the proposal.

One commenter stated the Draft EIS did not adequately consider the "No Action" Alternative and the adverse environmental impacts the alternative would have on DM&E and its customers. Another commenter acknowledged the Board for a commendable job describing the "No Action" Alternative.

Response

The Draft EIS included a complete and objective evaluation of the potential environmental impacts of the No-Action Alternative. SEA considers, reviews, and verifies information provided by DM&E in its consideration of environmental impacts. As part of SEA's preliminary conclusions in the Draft EIS, SEA described that the No-Action Alternative would not meet the applicant's stated project purposes.

The Board considered the transportation impacts of the proposed project and the No-Action Alternative in its December 1998 decision approving the transportation merits of the project, pending completion of the environmental review. In its decision, the Board reached several conclusions about the viability of DM&E if the proposed project were not approved (See Appendix A in the Draft EIS.)

Factor: F03C-Process - Public Outreach

10

Restatement 000161 29

Many commenters were concerned about ensuring due process and equal voice for the general public. Many stated that they have little influence on the process or decisions because DM&E controls the power and money and acts in their own best interest. Others stated they have been disenfranchised because of their unwillingness to cooperate with the DM&E Railroad. Citizens expressed concern that SEA has not provided factual information to the general public and has done little to rectify the under-representation of the rural citizens and neighboring towns. Others were concerned that City governments are misguiding the general public either in favor or opposition to the railroad upgrade. Citizens indicated that they are ineffective because their City governments seem to be reaching decisions without public input.

Several commenters stated that the public comment procedures limit public participation. For example, having to supply 10 copies and an original of any comment letter over 5 pages is an unnecessary expectation to limit public participation. Commenters cited the denial of access to sources in the Draft EIS as another limitation on the public' ability to participate in the process.

Response

SEA and the cooperating agencies implemented an extensive outreach plan with the specific intent of providing equal opportunity for the affected public to voice concerns. SEA and the cooperating agencies reviewed the written and oral comments on the Draft EIS. The Final EIS provides clarifying information and responses to the substantive comments on the Draft EIS. The Board and the cooperating agencies will base the final decision on an objective assessment of the complete available information. The Board will consider the Draft EIS, the Final EIS, public comments and responses to public comments in its final decision regarding the proposed project. Commenters submitting comment letters of 5 pages or more were asked to supply 10 copies of the comment letter to ensure that the letter was distributed through the agency for prompt review and response. SEA included substantial referencing to sources used for the Draft EIS, however some reference materials were not included in the Draft EIS to limit the size of the lengthy document. Restricting the size of the document is consistent with NEPA regulations.

Factor: F03B-Process - NEPA Compliance

10

Restatement 007546 295

Several commenters expressed dissatisfaction with the size and format of the Draft EIS. Commenters stated that the Draft EIS is so large and technical that it prevents the public from adequately understanding and commenting on the project. Other commenters said that they found the Draft EIS poorly organized and hard to read, and the web version was hard to access and search. One commenter said that the poor quality of the Draft EIS suggested that either the Board had an inadequate staff or that the Board used the format of the Draft EIS to hide information from the public.

One commenter complained that the Draft EIS was too repetitive, despite the assertion on page 3-1 of volume VIII-B, Appendix L that stated that information available in other documents would not be repeated in the Draft EIS. The commenter pointed to specific examples: Section 3.2 repeats III-A - Section 4.1.1 and 4.2.1; Section 3.3 repeats III-A, 4.1.14 and 4.2.14; Section 3.4 repeats VII-B - Appendix H; Sections 4.1 through 4.14 repeats information that is elsewhere in the Draft EIS.

Response

SEA prepared the Draft EIS to identify and evaluate potential environmental impacts of the DM&E proposed rail line construction and operation to coal mines in the Powder River Basin and to inform Federal, state, and local agencies, affected communities, Native American Tribes, and the general public about the potential environmental effects of the proposed project. SEA initially proposed a 90-day comment period, double the minimum time required by the Council on Environmental Quality's (CEQ) regulations for implementing NEPA at 40 CFR 1506.10, but after receiving numerous requests, stating that more time was needed to review and comment on the document because of its size and the complexity of the project, SEA extended the comment period for an additional 60 days.

The Draft EIS was organized consistent with NEPA and CEQ guidelines at 40 CFR 1502.10. It was intended to provide clear and concise information to the public and agency decision makers on the proposed project. The Draft EIS described the proposed project, alternatives, existing environment of the proposed project, and the potential environmental impacts associated with the proposed project. Chapters and specific topics within each chapter were outlined in the Table of Contents and numerically coded to aid the reader in locating individual areas of interest. Tables and figures were listed numerically by the chapter in which they occurred. Appendices were denoted with alphabetic characters and included at the end of the EIS. Volumes II and III of the Draft EIS organized information by region. Volume II addressed the proposed project impacts in Minnesota and Volume III addressed the proposed project impacts in South Dakota and Wyoming. Some repetition was inevitable, given the fact that issues are sometimes overlapping and interrelated.

Factor: F03B-Process - NEPA Compliance

Restatement 007546 296

Some commenters expressed dissatisfaction with the Board's scoping process. One commenter said the scoping notices did not effectively notify everyone. According to the commenter, scoping guidance documents indicate that press releases to newspapers, radio and television are not sufficient to adequately notify all affected parties.

One commenter said because the Draft EIS leaves some open-ended questions, the issues should have been more clearly defined during the scoping process. For example, the commenter notes, the Draft EIS stated that DM&E needs to submit grade crossing plans to authorities, but the Draft EIS does not put forth a plan for evaluation of the process DM&E will use, and, since the plans are not included in the Draft EIS, the public will not have an opportunity to comment on DM&E's grade crossing plans.

Response

Opportunities for public participation in the environmental review process in this case including scoping have been extensive. As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, the SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. Oral hearings also were held in several communities after issuance of the Draft EIS.

NEPA does not require that all issues be completely defined during scoping. In fact, one of the purposes of allowing public participation throughout the process is to allow the public to raise previously unforeseen environmental impacts, and then to analyze issues and information beyond those originally contemplated in the Draft or Final EIS. The CEQ guidance Forty Most Asked Questions Concerning CEQ's NEPA Regulations (Forty Questions) specifically allows agencies to solicit public input in how best to resolve complex environmental matters by requesting further information in the Draft EIS. The answer to Question 6(a) in Forty Questions states that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS.

Factor: F01G-Alternatives - Rochester Bypass

133

Restatement 000003 3

Commenters supported the Rochester Bypass Alternative because fewer people would be affected and the City and the Mayo Clinic would be protected from disruption, including disruptions from noise, safety, traffic delay, and emergency response delay. One commenter stated that patients of the Mayo Clinic will cut their visits a day or night shorter because of the increased coal train traffic and this will translate into an economic impact on Rochester. Another commenter indicated that corrections to the errors and omissions in the Draft EIS would demonstrate that the bypass is the best alternative.

Other commenters opposed the Rochester bypass because the bypass would result in greater impacts to rural landowners, businesses and wildlife and native plant habitat. Commenters also opposed the bypass because of the greater economic burden on taxpayers to build a new corridor. A commenter from Olmsted County stated that the citizens of Olmsted County should not have to pay more taxes just to relieve the City of Rochester and the Mayo Clinic from the inconvenience of train traffic. Another commenter maintained that Rochester should not be exempt from railroad traffic just because of inconvenience or the special status of the City. One commenter suggested that a bypass should be built for the new trains, but the existing trains should continue to run through the City of Rochester.

Response

As described in Chapter 9 of the Final EIS, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project.

Factor: F03B-Process - NEPA Compliance

20

Restatement 000161 3

Several commenters stated that they believed the Government favored DM&E' project and the Draft EIS indicated a biased point of view. One commenter said that the information about the no action or no build alternative in Volume IV, Ch. 6, Section 6.2.1.1 and 6.2.12 seemed not to be taken seriously and questioned whether the Board favored the project and the economic implications of it over the environment. A commenter urged the Board to protect the environment and not to give in to DM&E, while another said the Board should remember to balance competing interests carefully.

One commenter stated that the Draft EIS seems to give the benefit of doubt to rail applicants, which violates the EIS process and distorts the issues, making the project appear more viable than it really is. Another commenter complained that DM&E was included in the Board' meeting process to discuss the project, arguing that such contact between agency and Applicant prevented affected citizens from being given equal opportunity to participate in the project.

Response

The Board's processing of this case has been appropriate. While the Board found that DM&E had satisfied the transportation aspects of 49 U.S.C. 10901 in December 1998, the Board will not issue a final decision on DM&E's project until completion of the environmental review process. Also, the Board's environmental review process is an open process

that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA relies on applicants for operational data and project-specific information that only the applicant can provide. SEA conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS responds to all comments, which also are made public.

As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. Five agencies are cooperating agencies in this EIS process. Also, SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. About 8,500 comments were received during the comment period. The Final EIS addresses the issues raised in the comments.

The Board will base its decision on the PRB Expansion Project on the entire record before it. This will include DM&E's application and comments, as well as all the information received from other interested parties, including members of the public and state, local and Federal agencies, including the cooperating agencies.

Factor: F03B-Process - NEPA Compliance

25

Restatement 000163 3

Some commenters stated that the Board needed to speed up the environmental review process and issue a decision on the proposed project soon. A few landowners pointed out that the indefinite nature of the project prevented them from making necessary improvements to their lands.

Commenters indicated that delay would adversely affect the project, and that the Board should set forth a schedule for completion of the Final EIS and issuance of the Record of Decision, so that DM&E could more easily plan with customers and investors. Some commenters said the comment period should not be extended and questioned why the Board is delaying its approval of DM&E's proposed productive project when the Board has approved unproductive mergers in the past.

Response

NEPA requires Federal agencies to take a hard look at the environmental consequences of major Federal actions, such as DM&E's proposed project, that significantly affect the environment. The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is implemented, in order to minimize or avoid potential negative environmental impacts. See *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

In order to comply with NEPA, the Board must prepare thorough, accurate, and ultimately legally defensible environmental analyses. As stated in the Draft EIS, [t]he PRB Expansion Project is the largest and most challenging construction proposal ever before the Board. The proposed DM&E project involves construction of over 280 miles of new rail line and yards in three states, requires the participation of 5 Federal cooperating agencies, and raises numerous diverse environmental issues.

The Board remains committed to reviewing all proceedings brought before it including rail construction cases such as this one as expeditiously as possible. However, the Board must balance the need to move forward with the need to meet its obligations to ensure a thorough, adequate and legally sound environmental review under NEPA and related laws. Conducting a meaningful environmental review takes time and is critical to ensure the legal defensibility of the Board's decisions and,

ultimately, to minimize delay in the processing of cases and in the implementation of transactions that are approved.

Factor: F01A-Alternatives - Extension

2

Restatement 000161 24

Commenters stated that building more rail line would have negative environmental impacts on the areas traversed. Commenters questioned DM&E' intent to build more track when rail corridors already exist. Commenters also indicated concern for expansion plans, specifically where and if bypasses would be constructed. One commenter acknowledged DM&E' inability to negotiate with the existing Railroad as an indication that they should not expand.

One commenter supported the expansion of the railroad and acknowledged that the expansion would economically benefit surrounding communities.

Response

In its final decision, the Board will consider all of the information in the Draft and Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended mitigation for these types of impacts in Chapter 12.

SEA considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. SEA considered alternative rail routes that would use other portions of DM&E's existing rail system. Chapter 2 of the Draft EIS describes SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). SEA concluded that these alternatives were not reasonable and feasible alternatives to meet the project purpose and need. This determination was based on an independent evaluation of DM&E's rail system and operating information during preparation of the Draft EIS.

In regard to the comment on bypasses, SEA provided a thorough evaluation of bypass alternatives and comparisons of impacts with rehabilitation of the existing route for public review and comment. As described in Chapters 5 (Pierre), 6 (Brookings), 7 (Mankato), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts.

Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Factor: F01B-Alternatives - Rebuild

1

Restatement 000161 25

Several commenters supported DM&E's plans to upgrade existing tracks. Other commenters stated that reconstruction activities would have adverse effects. Commenters cited delays at grade crossings and negative impacts on the environment as reasons not to upgrade the track. Commenters from Olmsted County and Rochester called for robust mitigation before DM&E is permitted to upgrade the tracks and indicated that the mitigation should include the construction of underpasses and overpasses and sound barriers.

Response

In the Draft and Final EIS, SEA acknowledges the potential environmental impacts of the proposed project. In its final decision, the Board will consider all of the information in the Draft and Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of

community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended environmental mitigation in Chapter 12, including mitigation for potential impacts in Rochester and Olmsted County.

Factor: F02E-Analysis - Results

0

Restatement 003809 25

The commentor disagrees with SEA's conclusion that the Action alternative for the upgrade portion of this project is preferable. The upgrade alone will create new and profound adverse impacts to air quality, groundwater, wetlands, cultural resources, business and farm owners, and nearby residents. Given that SEA acknowledges that the increased rail traffic associated with the upgrade would partially detract from the general safety of the upgrade line, the benefit of the upgrade in terms of safety would be marginal at best. Certainly these marginal safety benefits do not outweigh the substantial damage.

Response

SEA acknowledges the comment and refers the commentor to the additional analysis presented in this Final EIS. While the upgraded line will have additional traffic, SEA believes that operational improvements and safety measures at intersections will make the line safer. A discussion of these impacts and proposed mitigation measures can be found in Chapter 4 and 12, respectively, of this Final EIS.

Factor: F03D-Process - STB policy, process

2

Restatement 007660 25

One commentor asked to find out the Indian Trust Responsibility policy of the Board and said that a discussion of the policy should be included in the section of the EIS that describes the Board's responsibilities.

Response

The Board is concerned about the interests and concerns of all persons interested in and potentially affected by the PRB Expansion Project, including Indian Tribes. Because the Board is an independent regulatory agency, and thus is not decisionally part of the executive branch of the Federal government, the Board is not legally bound by Executive Orders including Executive Order 13,084, Consultation and Coordination with Indian Tribal Governments issued May 14, 1998. Nevertheless, the Board makes every effort to comply with Executive Orders. Specifically, the Board is familiar with the Executive Order applicable to consultation and coordination with Indian Tribal Governments and incorporates the intent of this order into the environmental review process. Thus, although the Board is not required to and has not prepared a formal Indian policy, the Board does make every effort to comply with the intent of applicable Executive Orders for projects subject to its authority.

As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public, Indian Tribes, and state, local and Federal agencies in the PRB Expansion Project. Also, SEA scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. About 8,500 comments were received during the comment period, including comments from Indian Tribes. The Final EIS addresses the issues raised in the comments.

In particular, SEA has consulted with a number of Indian Tribes. A representative of SEA conducted a meeting over several days on the Rosebud Sioux Reservation from November 27th through December 2nd, 2000, specifically to gather oral comments, in addition to written comments, from Tribal members on the Draft EIS. Also, the

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Programmatic Agreement (PA) and Memorandum of Agreement (MOA) set forth a process of identification and treatment of cultural resources and sacred sites. The purpose of the Programmatic Agreement is to ensure the proper and respectful identification and handling of archeological sites. The MOA is designed to address Tribal concerns for other, non-archaeological resources, such as sacred plants, water quality, and big game migration routes. SEA’s recommended environmental mitigation would require compliance with both the PA and MOA.

Factor: F03E-Process - Cooperating agencies policies, processes

4

Restatement 008716 26

Commenters questioned the inconsistency of the proposed project with the Forest Plan Management Area Prescriptions (Forest Plans). One commenter questioned how the U.S. Forest Service (USFS) could amend the Forest Plans to allow Alternative C and asked if the public could appeal any amendment. Commenters said that amendments to the Forest Plans seemed unnecessary, since USFS has already chosen the No-Action Alternative.

Another commenter argued that USFS’s proposed mitigation overly supports DM&E’s efforts at mitigation, and said that the Forest Plans should not be amended to allow DM&E’s project to proceed.

Response

DM&E submitted a Special Use Application to USFS for an easement to construct the proposed project across portions of the Thunder Basin National Grassland in Wyoming and the Buffalo Gap National Grassland in South Dakota. The National Forest Management Act (36 CFR Part 219.10(e)) requires consistency between projects being proposed and National Forest Land and Resource Management Plans (Forest Plans). Two existing Forest Plans (Nebraska and Medicine Bow Forest Plans) were evaluated for consistency with the standards and guidelines of those Forest Plans as well as the Draft National Grasslands Plan Revision. Based on the USFS identification of its Preferred Alternative for this project, Alternative C, it has been determined that if Alternative C, as well as other alternatives considered, are selected, then Alternative C will not be consistent with any of the Forest Plans above and plan amendments must be proposed. The National Grasslands Plan Revision is not yet completed but it is anticipated that a plan amendment to this plan may be necessary if the Board approves the proposed project. USFS has proposed amendments to the Nebraska and Medicine Bow Forest Plans that are consistent with the original intent of the Forest Plans. Appendix L of the Draft EIS included the proposed amendments for public review and comment. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days.

If the proposed project gains approval from the Board, USFS will issue a Record of Decision (ROD) setting forth its approval or denial of DM&E’s Special Use Application. The ROD would incorporate any amendments to the Forest Plans. After issuance of the decision, the public would have 45 days to review and appeal the decision.

If the Board determines the proposed project serves the interests and needs of the national public, USFS believes that Alternative C is the preferred alternative for the project. The Final EIS includes USFS’s final mitigation plan, which incorporates specific and detailed mitigation for Alternative C.

Factor: F03D-Process - STB policy, process

4

Restatement 007554 219

One commenter requested that DM&E be required to submit a Safety Integration Plan (SIP) for the proposed project. The commenter said that because DM&E has a poor safety record it should be required to work with Federal Railroad Administration (FRA) to prepare the SIP, and the Board should make preparation of the SIP and compliance with it a condition of approval. The commenter questions Board policy of requiring SIPs in mergers, but not construction cases.

Response

SIPs are documents that describe the steps applicants will take to ensure the safety measures of a transaction involving the proposed integration of rail operations of multiple carriers. Neither FRA nor the Board require the preparation of a SIP in rail construction cases involving only one applicant. Even though no SIP is prepared, safety is not ignored, because railroads must comply with FRA and all other applicable safety requirements in the construction and operation of rail lines.

Factor: F04B-Project - Opposition

142

Restatement 000008 2

Many commenters stated opposition to the DM&E Railroad project and supported the No-Action Alternative. Commenters expressed concerns about the proposed action including negative environmental impacts, noise, detriment to the quality of life, concern about the transportation of coal, and insufficient level of analysis in the Draft EIS. One commenter stated that any economic gain would be short term compared to the negative long-term impacts of the DM&E expansion on the county' natural resources. Several commenters asked for a withdrawal and reissuing of the Draft EIS to improve the analysis. Some commenters qualified their opposition, stating that they would be opposed or supportive of the project depending on the construction of certain bypasses. Commenters concerned with negative impacts from the project came from Rochester, Pierre, Mankato, Winona, Eagle Lake, Black Hills and Pine Ridge Reservation area and Native-American tribal lands.

One commenter stated that economic impacts would be the greatest in the larger communities. The commenter also suggested that the railroad expansion is unnecessary because the future of agriculture is uncertain, therefore communities should be shifting to a system of using products, not shipping them.

Response

In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative. SEA is not recommending any of the community bypass proposals for approval by the Board.

Factor: F02C-Analysis - Methods

0

Restatement 000049 2

One commentator states the city council shouldn't have used tax money to support a private group opposing the upgrade. They should have negotiated to have the upgrade track either raised or depressed to eliminate all grade level crossings in the city, which also eliminate the need for blowing whistles by through trains.

Response

SEA encourages communities and DM&E to negotiate solutions in regards to areas of concern for the citizens. SEA, however, cannot direct their negotiations to determine the outcome of the proposed project.

Factor: F01F-Alternatives - Brookings Bypass

67

Restatement 000155 2

Many commenters opposed the bypass proposals because the bypass would merely transfer the impacts from one area to another and result in land takings from people who never chose to live by a railroad. Several commenters noted that if the City of Brookings supports the bypass, the City should pay for it.

One commenter asked if any of the City' financial support of this new line could be credited as "community sharing of bypass costs." Another commenter indicated that the South Dakota Congressional Delegation supports using Federal highway funds for the Brookings bypass.

Several commenters supported the Brookings bypass, noting that the bypass would reduce noise and traffic impacts and affect fewer people than the route through Brookings. Several commenters stated that many citizens of Brookings were not present to discuss the bypass proposal and this has caused local confusion. Several commenters indicated that SEA has not designed any environmental mitigation specific to the two remaining potential bypass routes around Brookings and that a meaningful Draft EIS must demonstrate a clear comparison between all proposed alignments. Several commenters stated that the socioeconomic impacts of routing the trains through the City would exceed those of bypassing the City and that an increase of trains operating through the City of Brookings would be a detriment to the timeliness and efficiency of service to existing customers.

The City of Brookings has proposed an alternative bypass route that some commenters supported because the route is shorter and would have less environmental impact. Other commenters requested the elimination of this bypass alternative and the original proposed bypass routes because of environmental impacts and because the City is taking a minority position on the subject of the bypass and claiming to speak for all the citizens in support of the new alternative bypass.

Response

SEA acknowledges the comments supporting and opposing the Brookings bypass. SEA reviewed and evaluated the Brookings bypass alternative and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. As part of its review of the public comments on the Draft EIS, SEA also reviewed and considered the information provided by the City of Brookings regarding a modified bypass alternative and determined that the existing route through Brookings is the environmentally preferred alternative. Chapter 6 includes a description of SEA's evaluation and the rationale for its determination of the environmentally preferred alternative.

Factor: F02D-Analysis - Mitigation 0

Restatement 001332 2

The commentator doesn't trust DM&E to stick with any contract terms. DM&E could sell to another company and they wouldn't uphold the contract terms.

Response

The Board reviewed DM&E's Application and found that the proposed project had merit. Ongoing safety concerns and the need to expand business operations are key elements of the DM&E proposal. Any future owner of the railroad would be faced with the same concerns. Any sale of the railroad would include those agreements signed by DM&E to improve conditions or mitigate impacts.

Factor: F02D-Analysis - Mitigation 0

Restatement 002372 2

The commentator states there are serious safety concerns and solutions must come before construction.

Response

SEA recognizes that safety measures must be in place prior to the commencement of any construction. Safety measures will include coordination with local and state authorities to review construction plans and methods for making construction zones safe for traffic, pedestrians, and emergency vehicles.

Factor: F02D-Analysis - Mitigation 0

Restatement 007708 2

The commenter stated that Steele County preserved its position to set forth its request for mitigation to be imposed as a condition of approval of this project.

Response

SEA directs the reader to Chapter 12 of this Final EIS and a description of SEA's proposed mitigation measures. SEA also encourages communities to work directly with the Applicant to arrive at agreed-upon mitigation for their community and resources of interest.

Factor: F02D-Analysis - Mitigation 0

Restatement 007757 2

One commenter stated that in the years ahead, DM&E originating traffic will probably constitute a much smaller percentage of the total alleged traffic in Winona. The commenter believed that no more than 17 DM&E coal trains will pass through Winona daily. Given the CP's present traffic, increases in that traffic, the current Amtrak train and the 12 additional passenger trains planned for this route as part of the Midwest Regional Rail System, DM&E cannot be singled out as a scapegoat for the impacts of rail traffic. All the parties, including the State of Minnesota and the City of Winona, should contribute to the amelioration of the problems at hand.

Response

SEA had identified in this EIS the anticipated impacts related to the proposed project as well as cumulative impacts from reasonably foreseeable projects (see Chapter 10 of this Final EIS). Chapter 12 of this Final EIS identifies SEA's proposed mitigation measures. DM&E will be asked to contribute mitigation for impacts that result from activities associated with their proposal.

Factor: F02E-Analysis - Results 0

Restatement 008099 2

The commentor states Chapters 2 and 3 of VIII B Appendix L consist of repetitious information. This needless repetition is designed to make the Draft EIS impossible to cover in the short time allowed and designed to make the Draft EIS look complete when it is not.

Response

SEA attempted to minimize repetitive information and provided the Executive Summary and the tabular presentation of information in the Draft EIS to provide clarity. The size of the project area and the linear nature of the study area resulted in a document that contained a great amount of information. The comment period was extended in order to give citizens and agencies adequate time to review the findings.

Factor: F03B-Process - NEPA Compliance 8

Restatement 000161 20

Several commenters raised questions and concerns regarding the need for the Government to use the doctrine of eminent domain to take private lands for DM&E' proposed project, and asked for more information about the eminent domain process. One commenter suggested that the Government should give DM&E tracts of Federal land, and complained that the Draft EIS focused more on Government lands than private lands. Another commenter said that ranchers will resist all efforts to have their land taken for DM&E' use. Some commenters said that population growth and decreasing available space has antiquated the doctrine of eminent domain, and one commenter said that the Board does not have the authority to take private property for DM&E' use.

Response

Eminent domain proceedings are regulated by state law and not administered by the Board. In rail construction cases before the Board, the Board determines whether the construction is inconsistent with the public convenience and necessity under 49 U.S.C. 10901 but the applicant is responsible for the acquisition of land necessary for execution of the proposed project. The Board has encouraged DM&E to negotiate with affected communities and individuals if the construction is approved to develop private agreements regarding the acquisition and use of land. DM&E has worked with the Landowner Advisory Board to develop a Land Use Mitigation Policy and Plan that addresses project impacts on private lands. In the event that the proposed project is approved and DM&E cannot reach agreements with landowners, eminent domain proceedings may be pursued as an avenue of last resort.

The Draft EIS addressed land use concerns, including preliminary recommended mitigation for effects to private, residential lands, in Chapter 7, Section 7.8.3. The Draft EIS discussed project impacts to specific regions of residential lands in Chapter 3 and Chapter 4.

The Final EIS addresses land use impacts in Chapter 3. Chapter 12 of this Final EIS describes SEA's final recommended mitigation requirements.

Factor: F02D-Analysis - Mitigation

10

Restatement 007554 146

Several commentors stated CEQ guidance for NEPA compliance states that NEPA requires that "reasonable alternative mitigation measures and monitoring programs" should be addressed in the draft and final environmental impact statement. The CWA section generally require information on the type of mitigation, mitigation plans, monitoring plans, standards for measuring mitigation success, or a contingency plan case of mitigation failure, information that is lacking in the Draft EIS in order to make the required Guidelines determination that appropriate and practicable steps have been taken which will minimize potential impacts. Furthermore there are no mitigation plans identified in any of the project documents for significant impacts to two National Park Class I airsheds, for the cut and fill operations or for the anticipated impacts to cultural resources. Mitigation must be addressed on a case by case basis, as different types of mitigation are appropriate for the same category of impact in different geographical locations, in direct response to the different conditions that exist in each of the different geographical locations. The Draft EIS fails to adequately address serious impacts of the proposed construction project on human health and welfare issues of specific concern to Mayo and does not identify or develop means to mitigate adverse environmental impacts. The Draft EIS does not meet NEPA requirements.

One commentor states on page 7-2, it is specifically stated that not much was done with mitigation for specific communities including Rochester, MN. The reasons provided were that impacts will be largely the same for all of the communities; that each will experience the same construction-related impacts and that noise impacts are not community specific, etc. This is contrary to the purpose of the NEPA and CEQ requirements.

Response

Chapter 10 of this Final EIS provides analysis of potential impacts to Class I airsheds. No significant impacts are expected. Additionally, cut and fill impacts to cultural resources are expected to be minimal. Chapter 12 of this Final EIS provides SEA's proposed mitigation measures for the proposed project. This chapter identifies mitigation measures that would apply to the entire project area as well as proposed measures that identify specific impacts in specific communities. Specific mitigation is provided for the city of Rochester.

Factor: F02D-Analysis - Mitigation

0

Restatement 007554 147

The commentor states page 7-3 says, "SEA also has not designed any environmental mitigation specific to the two remaining potential bypass routes around Brookings, SD and Rochester, MN.

Response

SEA has not recommended any of the bypass alternatives in this Final EIS. No mitigation of bypass impacts are thus required.

Factor: F02D-Analysis - Mitigation 0

Restatement 007554 150

One commentor expressed concern regarding the following statements in the Draft EIS: SEA will develop and recommend environmental mitigation applicable to the bypass for the Final EIS, if appropriate." "SEA requests comments on preliminary environmental mitigation measures presented in this chapter. In particular, if commentors believe that the unique circumstances of a community warrant individually tailored environmental mitigation in addition to the environmental mitigation in the Draft EIS, SEA urges the commentor to submit suggestions for environmental mitigation, and why it would be appropriate, to SEA during the public comment period."

Response

SEA requested mitigation input from the local populace in order to allow local citizens the opportunity to identify areas of special concern or interest that might be impacted by the proposed project. The request for information was made in conjunction with analysis performed by SEA. Citizens and agencies both took this opportunity to provide input for identifying potential mitigation. The final proposed mitigation measures are provided in Chapter 12 of this Final EIS.

Factor: F02D-Analysis - Mitigation 0

Restatement 007554 157

The commentor states it had to be obvious to SEA, even without the public hearing input, that specific mitigation measures were required for reconstruction through Rochester. Putting it off on the public is non-compliant.

Response

SEA allowed the public the opportunity to provide comments on specific mitigation. This was done as part of the public comment process. SEA recognizes the need for mitigation measures in Rochester. Chapter 12 of this Final EIS specifies proposed measures to mitigate impacts.

Factor: F02E-Analysis - Results 7

Restatement 000404 16

Several commentors said the Draft EIS had the following errors: Volume 3 states that Fall River County has 12,000 acres of prime farmland, all of it irrigated. Yet the WG Flat Route which seems to be the preferred route, cuts right through the middle of the irrigation District, taking 887 acres of prime farmland out of production. Therefor, DM&E's attempt to minimize impacts didn't work. The Draft EIS includes statements like the repeated assertion that improved safety would be the "primary environmental benefit" of the proposed project. It is unclear how this conclusion was reached, given the STB's over enthusiastic conclusions regarding other types of benefits, particularly economic benefits, and its observation that increased rail operations would offset some safety improvements. The Draft EIS should contain more grammatically correct words such as affected, altered,

changed, removed, filed disturbed, or modified instead of impacted. Due to the small size of the maps it was difficult to get an overall sense of various project features relative to one another. Additionally, the locations of specific/existing water crossings were not indicated on the maps.

Response

After extensive analysis was conducted on all alternatives, SEA determined the WG Divide Alternative to be the preferred route due to the fact that it minimizes impacts on all relevant areas of the environment, not simply one farmland.

To provide convenience, the maps were reduced to a size suitable for insertion into the text. SEA's analysis was conducted using much larger maps however, therefore various project features were highly visible.

The project impacts are extensively analyzed throughout the Draft EIS. Generalized terms within the summary were used to reduce redundancy in the text discussions. Due to the complexity of the proposed project, SEA felt it would simplify the content, as well as provide consistency for various readers, to use the suitable term "impacted."

Factor: F02D-Analysis - Mitigation

4

Restatement 001523 16

Several commentors stated Chapter 7 of the Draft EIS "Section of Environmental Analysis's Proposed Environmental Mitigation" is lacking the kind of detail that would provide some assurance that adequate mitigation will occur. As an example, only one bridge crossing (Missouri River at Pierre, SD) is specifically mentioned as needing best management practices to control turbidity and disturbance to bottom sediments. Mitigation for impacts to other resources, such as Garvin Brook, with eight crossings in few miles of track, should also be specifically discussed. Further, specific mitigation practices, such as those found in the Federal Energy Regulatory Commission guidelines for pipeline projects, and the use of sedimentation basins, should be cited. The mitigation chapter makes no mention of Minnesota waters or karst geology. Page 7-28 contains just two statements related to monitoring and enforcement. The second statement indicates that the applicant shall retain a third party contractor to assist in monitoring and enforcement on an as needed basis. Also mitigative steps for addressing air quality concerns were not described. Depending on the results of Minnesota specific air quality impact assessment, it may be appropriate to address these in this section. In addition Chapter 7 gives the impression that SEA will be held responsible for everything. DM&E is responsible for enacting the required mitigation, SEA is responsible to see that it is done. In Chapter 7 the STB invites the public to let it know if a community is unique in some way and to suggest any mitigation needed as a result. If the STB does not know the unique characteristics of each town along the route by now. It has not done the work necessary to an adequate Draft EIS. The public should not have to do the agency's work.

Response

Chapter 12 of this Final EIS provides detailed mitigation to address potential impacts from construction and operation of the proposed project. In addition, Chapters 3 through 9 provide additional detail and narrative for the proposed impacts to specific communities. Impacts related to existing, parallel, and new bridge structures are found in Chapter 5 - Pierre. A discussion of the karst topography in the study area is provided in the discussion about Rochester in Chapter 9. The specific conditions of SEA's proposed mitigation measures are found in Chapter 12.

Factor: F02D-Analysis - Mitigation

0

Restatement 007541 16

The commentor states after evaluating potential and appropriate environmental mitigation through the EIS process, the Board is required to ensure that such mitigation is reasonably related to the purpose of the DM&E project: to assist shippers with their desire to obtain competitive, reliable, and efficient coal transportation service, and to

ensure the continued viability of DM&E itself. In particular, SEA must be mindful that the imposition of individual or cumulative environmental mitigation measures that are operationally and/or financially unviable.

Response

SEA has made every effort to recommend mitigation measures that reflect the true need for impact relief. These measures are identified in Chapter 12 of this Final EIS. Mitigation measures are intended to provide a high level of safety and accessibility while protecting natural and man-made resources.

Factor: F02A-Analysis - Data Accuracy 0

Restatement 000234 17

The commentator states because the Draft EIS is hard to use, conclusions aren't documented, NEPA requirements were not met, references were not available to verify claims, and public officials can not make informed decisions without reliable up to date information the public can not comment on the merits of the proposal in an informed atmosphere.

Response

SEA recognized that the size of the Draft EIS was of concern to citizens and review agencies and extended the comment period for the Draft in order to allow a full review of the document. The Final EIS documents the conclusions of the analysis and the recommendations of SEA for each of the alternatives. An index has also been provided to assist the reader in finding topics of concern or interest.

Factor: F02E-Analysis - Results 0

Restatement 000234 17

The commentator states because the Draft EIS is hard to use, conclusions aren't documented, NEPA requirements were not met, references were not available to verify claims, and public officials can not make informed decisions without reliable up to date information the public can not comment on the merits of the proposal in an informed atmosphere.

Response

SEA recognized that the size of the Draft EIS was of concern to citizens and review agencies and extended the comment period for the Draft in order to allow a full review of the document. The Final EIS documents the conclusions of the analysis and the recommendations of SEA for each of the alternatives. An index has also been provided to assist the reader in finding topics of concern or interest.

Factor: F02D-Analysis - Mitigation 0

Restatement 007701 17

The commentator states the STB must, if it is sincere in performing an environmental assessment in even the most rudimentary sense, condition this railroad expansion project on the following bare minimum protections to the human environment. First, the STB must give notice of the DM&E's proposal to, and provide an opportunity to be heard by, all people and communities along the IMRL. Second, there must be a grade separation between the DM&E and IMRL lines where these lines meet within the City of Owatonna.

Third, the STB must mandate a compensation procedure and formula by which every property owner immediately affected by this project will be compensated for all harm caused by this project. These three demands are not intended to be exhaustive of our demands.

Response

A detailed description of the proposed connecting track between DM&E and the I&M Link at Owatonna is found in Chapter 8 of this Final EIS. Additionally, a description of the proposed mitigation measures is found in Chapter 12 of this Final EIS.

Factor: F03B-Process - NEPA Compliance

18

Restatement 007554 179

Some commenters complained that the Draft EIS left out several impacted communities from both analysis and participation in the process. For example, the commenters said the Draft EIS does not address the increase of rail traffic in Austin, MN or other communities along the I&M Rail Link Railroad (IMRL). One commenter requested that the Board prohibit the DM&E link with the IMRL until the environmental impacts on the City of Medford, MN have been evaluated and mitigated. Another commenter said the Draft EIS needed to discuss the DM&E and IMRL connection in more depth. The commenter said the Board did not notify or invite comments from communities located along the IMRL, although the project would impact them. The commenter said that in the Owatonna, MN Agreement, the city agreed to support the project if DM&E would pay for four-quadrant gates at intersections, two of which are IMRL intersections.

One commenter said the Draft EIS should be expanded to include the cities of Goodview and Winona, MN at the east end of the DM&E line, which would feel the same effects as cities in the west. Another commenter said that the Draft EIS does not discuss specific impacts on the city of Winona or Winona State University, which violates 49 CFR 1105.7, requiring the Board to describe effects on public services.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

Although the existing DM&E rail line does not extend into the cities of Winona or Goodview, MN, Chapter 3 of the Draft EIS included analysis of the impacts of the proposed project on those communities.

Factor: F02E-Analysis - Results

0

Restatement 007541 18

The commentator states the Coal Consumers urge SEA and the Board to evaluate the environmental impacts of the DM&E's Application in a manner that helps assure future competitive and reliable coal transportation service and adequate rail transportation capacity in moving PRB coal to market. The nation's interest in the full use of its largest low-sulfur coal reserves as fuel for the generation of electricity remains at stake and should be carefully considered when evaluating alternatives through the EIS process.

Response

SEA has used the NEPA process to evaluate all aspects of the proposed project on both the natural and built (man-made) environment. The purpose and need of the project are clearly stated in both the Draft and Final EIS. The evaluation of environmental impacts were made in the context of this purpose and need.

11/15/2001

Similar
0

Factor: F02D-Analysis - Mitigation

Restatement 007554 136

One commenter indicated that the increase in the number of trains operating on the existing system and the impact caused by construction and operation of the lengthy new rail line through generally pristine rural areas would have significant environmental consequences, such as noise, would be hard to mitigate.

Response

SEA has evaluated the impacts of both new construction and rehabilitation of the existing line. SEA is not recommending the construction of the bypass routes thus avoiding impacts to rural areas characterized by farm and forested land. The increase in rail traffic will impact the noise environment. The Final EIS addresses noise impacts for each of the major communities along the rail line. Chapter 12 identifies proposed mitigation related to noise impacts.

Factor: F02D-Analysis - Mitigation

0

Restatement 007554 138

The commentor states no mitigation is defined to reduce or eliminate the potentially significant effects that are identified for reconstruction through Rochester, as required by the CEQ regulations. The bypass is referred to in the document as mitigation, but it is not. The bypass is an alternative.

Response

SEA agrees that the Rochester Bypass was presented as an alternative route for the DM&E. The route through Rochester will have impacts that are documented in the Draft EIS and in Chapter 9 of this Final EIS. Chapter 12 of this Final EIS identifies SEA's proposed mitigation measures for the route through Rochester.

Factor: F03B-Process - NEPA Compliance

12

Restatement 007554 139

One commenter stated that the construction impacts of the Rochester, MN reconstruction versus the Rochester Bypass need more evaluation to satisfy the CEQ regulations at 40 CFR 1502.1. The commenter stated that the environmental impacts of the proposal and the alternatives must be depicted in comparative form to show the "clear basis" for choice. Another commenter said that more alternatives should have been looked at for the Rochester area because the Bypass was the only alternative examined and there may be other "reasonable and feasible" alternatives. Another commenter pointed out that the Draft EIS treats the Rochester Bypass as mitigation, when it really should be viewed as an alternative.

A commenter said that the Board should have provided more localized mitigation for the Rochester reconstruction than it did in the Draft EIS, and that asking the public for input as to additional mitigation options was inadequate.

Citizens Against Rochester Bypass stated that the comment period should not have been extended, because the City of Rochester has been well-informed and involved throughout the environmental review process. The Citizens Against Rochester Bypass argued that the Bypass does not further NEPA's goals of protecting the environment.

Response

As NEPA and the Council on Environmental Quality regulations implementing NEPA require, the Draft EIS examined several alternatives for each of the project components, including Rochester. SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was

needed to determine the environmentally preferable alternative for certain other project components, such as Rochester. In the CEQ guidance Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (Forty Questions), the answer to Question 6(a) states "that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS."

The consideration of Rochester alternatives has been appropriate. The Draft EIS set forth four alternatives for the Rochester area in Section 3.3.2 (the No Action Alternative, Reconstruction of existing rail line, Approval of bypass for coal traffic, and Approval of bypass for all rail traffic) and examined the environmental consequences of each alternative. The Final EIS responds to the comments raised regarding Rochester and discusses and analyzes the alternatives for the Rochester area in Chapter 9. The Draft EIS contains some localized mitigation for Rochester and additional mitigation for that community is recommended in the Final EIS in Chapter 12. Finally, the analysis of Rochester would be the same whether it is treated as mitigation or an alternative, since adoption of the Rochester Bypass would be one way to mitigate the environmental impacts of DM&E's proposal to haul unit coal trains.

Factor: F03D-Process - STB policy, process

23

Restatement 000155 14

1. Board Policy

Some commenters said they wanted more information on the Board's environmental review and project approval processes. One commenter asked whether the Board had ever denied a rail expansion project. Another commenter accused the Board of acting irresponsibly on this project. A commenter alleged that the Board provided more information to the applicant than to other interested parties. Another commenter said that the Board practices antiquated policies that favor the railroad instead of people, and if the Board does not impose appropriate mitigation for Rochester, the agency's image will be ruined. One commenter questioned whether railroad policy has been modified from 100 years ago, and said that the Board needed to update Federal railroad policy in order to properly review the project.

2. Inadequacies of the Board's Process

One commenter said the lack of Council on Environmental Quality (CEQ) compliance in the Draft EIS indicates that there was inadequate guidance, participation and independent evaluation, and that it seems like SEA does not have enough personnel to complete the project. A commenter said the Board had left it up to the public to decide contentious issues, such as the Rochester option, the Brookings option, yard options and other mitigation, and that if the Board cannot make politically difficult decisions, another agency should become the lead agency for the project.

3. Suggestions for Modification of the Environmental Review

One commenter suggested that the Board should consider as part of its environmental review the analysis of environmental impacts to areas that are significantly affected but do not meet SEA's thresholds for environmental review. Another commenter said other cases, such as Idaho Pub. Util. v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994), have viewed the Board's practice of imposing consultation conditions as insufficient mitigation, so the consultation conditions in the Draft EIS cannot be considered as adequate mitigation.

Response

1. Board Policy

Similar

Congress has recently addressed Federal railroad policy by enacting the Board's governing statute, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), in 1995. ICCTA sets forth the Board's jurisdiction and authority, including the Board's authority to authorize rail constructions. Congress also enacted NEPA in 1969 to require Federal agencies to consider the environmental consequences in every recommendation or report on major Federal actions significantly affecting the quality of the human environment. See 42 U.S.C. 4332(2)(C). The Council on Environmental Quality (CEQ) has defined major federal actions to include projects regulated or approved by Federal agencies, which in the Board's case, would include rail constructions. The Board's regulations implementing NEPA are listed at 49 CFR Part 1105. The Board revised these regulations in 1991. See Implementation of Environmental Laws, 7 I.C.C.2d 807, 817 (1991).

Although a procedural statute, NEPA ensures that the public has a voice in the environmental review process. NEPA requires Federal agencies to conduct extensive public outreach and to solicit public participation throughout the environmental review process. The Board's environmental review process is based on this recent legislation, and is an open process that allows multiple points of view to come before the Board. The Board's process incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA initially meets with applicants to gain an understanding of the proposal and obtain project-specific information that only the applicant can provide. SEA then conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs and EAs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS or post-EA responds to comments, which also are made public, and sets forth SEA's ultimate environmental recommendations to the Board.

In *Indiana & Ohio Railway Co., Constr. and Operation in Butler, Warren, and Hamilton Counties, OH*, 9 I.C.C. 2d 283 (1993) the ICC (the Board's predecessor) denied a rail construction application based on the recommendations in the EIS. The EIS indicated that the environmental impacts, namely public safety concerns, could not be effectively mitigated, and included recommendations for the no-build alternative. The agency concluded that the environmental impacts outweighed the transportation benefits of the proposed construction, and denied the construction application.

2. Inadequacies of the Board's Process

SEA relied on CEQ regulations when preparing the Draft EIS and worked closely with EPA in the development of the Draft EIS. SEA submitted the Draft to EPA's Office of Federal Activities (OFA) for its review and comment. OFA responded by issuing a detailed comment letter. Representatives of EPA also attended public comment meetings held after issuance of the Draft EIS. EPA will review and rate the Final EIS.

In the Draft EIS, SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was needed to determine the environmentally preferable alternative for other project components. In the CEQ guidance *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (Forty Questions)*, the answer to Question 6(a) states that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS.

SEA has identified the environmentally preferable route for each alternative of the proposed project in the Final EIS.

3. Suggestions for Modification of the Environmental Review

SEA's recommended mitigation for the proposed project is far-reaching and goes well beyond consultation conditions. In *Idaho Pub. Util. v. I.C.C.*, 35 F.3d 585 (D.C. Cir. 1994), the court faulted the Board's predecessor agency, the ICC, for simply imposing environmental conditions that required subsequent consultation and permitting by other agencies in lieu of the ICC undertaking its own analysis. In this case, however, SEA has taken the requisite hard look at the environmental consequences of DM&E's proposed project, has

issued an extensive and comprehensive EIS, and has developed extensive mitigation measures in response to the data collected. Unlike Idaho, the consultation conditions recommended here were imposed after SEA had itself taken the requisite hard look at potential environmental impacts. There has been no improper delegation to other agencies in this case.

Factor: F02A-Analysis - Data Accuracy 0

Restatement 000182 14

The commenter believes DM&E has lied and deserves punishment; the plan will severely damage a unique, dynamic city; the plan presents higher than normal risks to the citizens of Rochester.

Response

The Board has reviewed the DM&E Application for the proposed project and has determined the project to have merit. SEA has attempted to conduct a thorough and impartial review of the potential impacts of the project on the natural and man-made environment.

Factor: F03B-Process - NEPA Compliance 20

Restatement 007554 141

Various commenters expressed dissatisfaction with the Board’s development of mitigation for the Draft EIS. While few concerns were raised about the specific conditions recommended in the Draft EIS, one commenter said that if the Board imposes mitigation that causes project delay or makes the project economically unviable, the mitigation will conflict with NEPA’s goal of having alternatives be reasonably related to the project. Another commenter said that DM&E has worked hard to seek ways to mitigate the impacts of this project and the project’s benefits outweigh its environmental costs. Another commenter said that the Board should assess the cumulative effects of mitigation on capital and operations in order to develop fair mitigation.

One commenter complained that Volume IV, Section 7.7 contained largely general mitigation measures and that more specific mitigation measures should be developed. The commenter cited 40 CFR 1502.9(a) and said SEA should not wait until the Final EIS to develop specific mitigation for the Rochester area and other communities.

One commenter recommended that the Final EIS outline complete mitigation plans so that the costs and impacts of each alternative can be clearly understood. Another commenter said the mitigation section in the Draft EIS did not provide enough information for commenters to submit informed comments.

One commenter said that condition 103 in the Draft EIS needs to be clarified to indicate that parties can seek clarification or augmentation of mitigation conditions after DM&E starts operations, as the Board allowed in the Conrail merger acquisition. Another commenter asked for more information on condition 104, which requires DM&E to retain a third-party contractor to assist SEA in monitoring mitigation until the proposed project’s reconstruction and construction stages reach completion, and asked whether Tribes can bid on the chance to be the third-party contractor.

Response

The Draft EIS outlined preliminary mitigation measures in Chapter 7. The Final EIS contains additional mitigation developed in response to the comments and SEA’s additional analysis, including general and site specific mitigation, in Chapter 12. The Final EIS contains additional site specific mitigation. However, most of SEA’s final recommended

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mitigation measures apply generally to both DM&E's proposed new line and the reconstruction and upgrade of DM&E's existing line. That is because the potential environmental impacts on communities associated with this project appear to be largely the same. Regardless of the individual characteristics of the communities involved, each of the affected communities would experience the same construction-related impacts and number of trains.

If the proposed project gains Board approval and Condition 103 in the Draft EIS is imposed, communities could seek further relief from the Board after the Board's final decision has been issued if there is a material change in the facts or circumstances upon which the Board relied on imposing specific environmental mitigation conditions. Furthermore, the Board's rules specifically allow the filing of petitions to reopen Board decisions alleging changed circumstances, material error, or new evidence. See 49 CFR 1115.4.

Condition 104 of the Draft EIS would assist SEA in monitoring DM&E compliance with imposed mitigation measures, on an as-needed basis. SEA and a third-party contractor would monitor DM&E's progress in carrying out the required environmental mitigation until DM&E has completed project-related construction and reconstruction activities as well as a period covering the first year of project-related operations, or for any period the Board imposed. The determination of the third-party contractor would only be made assuming that the Board approves the PRB Expansion Project and imposes Condition 104 or a similar condition.

Factor: F02E-Analysis - Results 0

Restatement 007554 143

One commenter stated that the Draft EIS did not provide mitigation for specific communities because the impacts will be largely the same for all of the communities.

Response

SEA agrees that some mitigation measures will apply to conditions over the entire route of the proposed project. However, Chapter 12 of this Final EIS identifies proposed mitigation measures that are community and location specific for such areas as Rochester, MN, Pierre, SD, and Mankato, MN.

Factor: F02E-Analysis - Results 0

Restatement 004787 12

The commentator objects to the Mankato Alternative M-2 as a bypass route. The noise and vibration impact on Hillcrest properties will be substantial given its close proximity to the anticipated DM&E rail line. The commentator is especially troubled that the consequences on the health care business weren't addressed in the Draft EIS.

Response

SEA is recommending the Southern Alternative route around Mankato. A description of the alternatives and the basis for the recommendation is found in Chapter 7 - Mankato of this Final EIS. This chapter also considers the potential impacts to the Hillcrest Home. Impacts to this residential structure are not expected to be significant.

Factor: F03C-Process - Public Outreach 4

Restatement 007566 12

Several commenters remarked that the Outreach Plan assumed that low-income minorities, many with minimal English skills, would participate in the review process. Although minority groups were notified of the Draft EIS, it is unknown if the groups were in contact with local residents. Commenters stated that SEA must be mindful of the challenge for lower income families, because of struggles to meet basic needs, to comment on a 5,000-page document. Commenters suggested that SEA establish mitigation

standards for those neighborhoods designated as affected by Environmental Justice issues.

Response

In addition to an extensive outreach plan, SEA took additional steps to notify and involve affected minorities and low-income community members. Those activities included meetings and consultations, many site visits, use of the Board's official web site, and a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process, to facilitate and encourage public understanding and participation. SEA contacted groups representing and working with low-income and minority community members with the goal that these groups would assist these individuals with participation in the process. Further response regarding Environmental Justice issues is provided in Chapters 3 and 4 of the Final EIS.

Factor: F03D-Process - STB policy, process

14

Restatement

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Commenters questioned the role and participation of the cooperating agencies in the project's environmental review process. Commenters wondered what would happen if one or more of the cooperating agencies disagreed with the Board as to the preferred alternative. One commenter pointed out that the Bureau of Reclamation supports the no-action alternative, while another commenter asked what impact cooperating agencies would have on the Board's decision if they all advocated the no-action alternative. Another commenter wondered how a SEA determination that neither alternative A nor B is environmentally preferable would affect the evaluations of the other agencies.

One commenter complained that the amount of material generated by all the agencies for the project was overwhelming for the public. For example, in addition to the Draft EIS, the U.S. Army Corps of Engineers issued a lengthy document on the 404 permitting process. One commenter requested that the U.S. Army Corps of Engineers extend the comment period for its 404 permitting document, because the nearest copy of the document was in a distant library. Another commenter suggested that the U.S. Army Corps of Engineers should have prepared its own EIS, and complained about inaccuracies in the maps.

Another commenter wondered why the Board invited the Bureau of Reclamation to be a cooperating agency so late in the process. The commenter said that the Bureau of Reclamation should have been included as a cooperating agency as soon as the project began to address the Hay Canyon, SD alternatives, since Hay Canyon, Oral Segment and WG Flat cross Bureau of Reclamation lands.

Response

Under the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, when one or more agencies has jurisdiction over an action that requires the preparation of an EIS, one agency shall be the lead agency and the other agencies shall be cooperating agencies that assist the lead agency in the preparation of the EIS. 40 CFR 1501.5, 1501.6. In this project, the Board is the lead agency, and the U.S. Department of Agriculture, Forest Service (USFS), U.S. Department of Interior, Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of Reclamation (Reclamation), and U.S. Coast Guard are the cooperating agencies. The Draft EIS in Section 1.6, lays out the various responsibilities and jurisdiction of the lead and cooperating agencies over the proposed project. The Final EIS in Chapter 1 addresses the procedures each agency must follow before reaching a decision on DM&E's application.

During the scoping process, outlined in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, the Board identified and requested USFS, BLM, COE, Reclamation and Coast Guard to become cooperating agencies in the environmental review process. The Board's Revised Notice of Intent to Prepare an EIS, published on August 7, 1998, indicated that USFS, BLM and COE would be participating as cooperating agencies. Reclamation and the Coast Guard accepted the Board's invitation to become cooperating agencies as part of a notice filed by the Board on January 12, 2000.

COE is the responsible agency for the 404 permitting process, which would be completed after the Board makes its decision on the proposed project. COE extended the comment period on the Section 404 permitting process to March 6, 2001, to coincide with the extension of the comment period on the Draft EIS.

CEQ sets forth guidance for the relationship among lead and cooperating agencies in its document Forty Most Asked Questions Concerning CEQ's Regulations, 46 Fed. Reg. 18026 (1981). The answer to Question 14(b) states that the agencies should work together to ensure that the EIS is as comprehensive as possible and includes information needed for all agencies to evaluate the project. Otherwise, supplemental documents may be needed that would unnecessarily duplicate the EIS process. Thus, for example, both the Draft EIS and Final EIS for the PRB Expansion Project have examined the environmental effects of DM&E's proposed rebuild of its existing line to aid COE's decision-making process. The answer to Question 14(b) also states that the lead and cooperating agencies do not need to reach the same conclusions from the information contained in the EIS just because they are issuing the document jointly. Each agency can identify different preferred alternatives and even indicate distinct environmentally preferable alternatives in their final decisions.

The Bureau of Reclamation was asked to participate in the project as a cooperating agency after it was determined that an easement would be needed should the WG Divide Alternative be selected.

Factor: F03E-Process - Cooperating agencies policies, processes

14

Restatement 000376 13

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Response

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Factor: F02A-Analysis - Data Accuracy

14

Restatement

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Response

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(BLM), U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of Reclamation (Reclamation), and U.S. Coast Guard are the cooperating agencies. The Draft EIS in Section 1.6, lays out the various responsibilities and jurisdiction of the lead and cooperating agencies over the proposed project. The Final EIS in Chapter 1 addresses the procedures each agency must follow before reaching a decision on DM&E's application.

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The Bureau of Reclamation was asked to participate in the project as a cooperating agency after it was determined that an easement would be needed should the WG Divide Alternative be selected.

Factor: F02D-Analysis - Mitigation 0

Restatement 007541 10

The commentor stated that SEA must consider specific alternatives and the imposition of environmental mitigation in the context of advancing the overall goals of the DM&E project.

Response

SEA agrees that proposed mitigation measures must not work contrary to the purpose and need of the proposed project. SEA also notes that mitigation must also provide relief from potential impacts and provide the population in the project area with traveling safety and the protection of natural resources.

Factor: F02B-Analysis - Existing Conditions 0

Restatement 004295 11

Onecommenter indicated that Option B along Shag Road is described at page 3.5-20 of the Draft EIS as being an area which is "rural and undeveloped." Later on that same page, the Draft EIS recites that there are "approximately 1.6 acres of residential land present within the proposed rail yard site," with two residences being located within the site, itself. On the next page, the Draft EIS recites that there are "12 residence located within 500 feet of the proposed rail yard boundary," consisting of five rural farmsteads and seven residences.

Page 3.5-21, states that the proposed Option B or Shag Road site includes "no commercial property" located within the proposed rail yard boundary. The following page, page 3.5-22, refers to "one intermittent stream" passing through the proposed Middle East Yard along the Shag Road area which is noted in the Draft EIS as Option B. All of these and many other descriptions of the Shag Road area are just plain wrong.

Response

SEA received numerous comments regarding the existing conditions along Shag Road and the proposed Middle East Yard. Chapter 4 of this Final EIS provides additional descriptive narrative and analysis for the proposed siting of this rail facility. SEA has also proposed mitigation that is specific to the Shag Road area in order to maintain continued access at both ends of the road. The reader is directed to Chapter 12 of this Final EIS for this proposed mitigation measure.

Factor: F02D-Analysis - Mitigation 0

Restatement 007541 11

The commentator stated the Final EIS should ensure that any mitigation imposed is both economically and operationally feasible in furthering the DM&E's proposed PRB coal operations and its continued viability as an important rail carrier serving upper Midwest.

Response

SEA believes that the proposed mitigation measures are both economically and operationally feasible within the context of the proposed project.

Factor: F02E-Analysis - Results 0

Restatement 007680 1

The commentator states the NCD finds that the summary alone has many concerns for the natural resources, wildlife and protection of the public and private lands as well as stabilization of the Agriculture community and its quality of life. These concerns make the DM&E a critical concern for the District. The plan addresses the impacts, as they would affect the resources over the long term. They address the construction phase of the project but fail to look at the issues over time. The NEPA laws seem to be disregarded in several cases. Conservation Districts are required to have Long Range Plans and Annual Work Plans. The Niobara County Commissioners and the local Planning and Zoning Board also have in place, documents to protect the community. In some cases this plan is in direct conflict with local governmental plans. The Draft EIS must discuss any inconsistency of a proposed plan with any approved state and local plan or law. Where inconsistency exists, the EIS should describe the extent to which the agency would reconcile its proposed action to the plan or law.

Response

As noted in Section 12.8.1.8, Recommended General Mitigation Measures for Biological Resources, the Wyoming Game and Fish Department is a consulting agency on several of these conditions, including the same item listed as #74 in the Draft EIS. Specifically, SEA is recommending the DM&E develop and implement, in consultation with the U.S. Fish and Wildlife Service, South Dakota Department of Game, Fish and Parks, Wyoming Game and Fish Department, and Minnesota Department of Natural Resources, a habitat restoration plan designed to compensate for the loss of trees, shrubs, and other woody vegetation, prairies, and other important wildlife habitats as a result of project-related construction and reconstruction activities.

SEA acknowledges the comment about mitigation to alleviate impacts on access to public lands. Section 12.8.1.5 of the Final EIS states that DM&E shall consult with Federal land managers to determine locations where project-related construction and reconstruction activities will result in lost or reduced access to public lands due to temporary road closures or other construction related activities. SEA has recommended that the DM&E develop a plan to provide alternative access to these lands during project-related construction and reconstruction activities and operation of unit coal trains to the extent practicable.

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Similar
0

Factor: F02C-Analysis - Methods

Restatement 007693 1

One commenter complained that the Draft EIS contained numerous errors, incorrect statements and assumptions. The commenter said that the Board made too many assumptions in the Draft EIS and should have explained the issues and used verifiable data to support conclusions. The commenter said the Board should prepare another Draft EIS to address the inaccuracies.

Response

The Draft EIS included SEA's extensive analysis of the environmental impacts of the proposed project and referenced published material as sources of information. The Final EIS describes SEA's additional analysis of project impacts and has updated information that was determined to be inaccurate.

According to the Council on Environmental Quality's (CEQ) guidelines for implementing NEPA at 40 CFR 1502.9(c)(1), agencies are required to prepare a supplemental EIS if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

Since the issuance of the Draft EIS, DM&E has not made substantial changes to its proposed project nor have significant new circumstances or information come to light. In fact, SEA's analyses and many of the conclusions and recommendations in the Final EIS remain essentially the same as those in the Draft EIS. Although EPA previously recommended that a supplemental EIS be prepared in this case, EPA has recently indicated that a supplemental EIS is not required. See EPA letter in this Final EIS, Appendix C.

Factor: F03D-Process - STB policy, process

0

Restatement 007693 1

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Response

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Factor: F02D-Analysis - Mitigation

0

Restatement 007708 1

The commenter stated that Steele County Board opposed Owatonna's proposed railroad bypass, which was withdrawn. Steele County however joins with the City of Owatonna in requesting adequate mitigation measures within the city. Steele County requests that those same mitigation measures be applied, and to the same extent, outside the limits of Owatonna, for the protection of rural residents as well as the citizens of Meriden and Havana.

Response

SEA has not recommended the construction of any bypasses for this proposed project. A more detailed narrative of the specific impacts of the proposed project on Steele County and Owatonna is found in Chapter 8 of this Final EIS. SEA's proposed mitigation measures are found in Chapter 12 of this Final EIS.

Factor: F02C-Analysis - Methods

8

Restatement 007712 1

Several commentors found the following omissions in the Draft EIS: the impact of the expansion on Winona, MN and the CP Rail Track and the communities along the I&M railroad were not included. The negative impact of this proposal will have the same negative effects on all the communities adjacent to the I&M rail lines. Page 3.2-32 of the draft document states, "Because it is reasonable that such movement of trains would occur and the citizens of and elected officials in Winona expressed concern for noise, air quality, transportation, and safety in their community due to this increase in rail traffic, the Section of Environmental Analysis determined it appropriate to consider these potential impact along the Canadian Pacific line in Winona". Noise level, however, is the only concern substantively analyzed within the Draft EIS. the impact of the proposed project on the City of Goodview.

Response

SEA conducted an analysis based on currently available information provided and feels an equally substantial analysis was performed in regards to all areas of concern by the citizens of Winona. The potential environmental impacts imposed on Winona by the proposed project are discussed in the appropriate sections of the Draft EIS (Chapter 3.2). Impacts of the proposed DM&E expansion on Winona, MN are discussed in the appropriately corresponding portion if the DEIS (Section 3.2). Tables 3.2-13 and 3.2-14 illustrate the increased impacts due to noise at both 65dba and 70dba pertaining to all levels of rail operation (20 MNT, 50 MNT, and 100 MNT). The analysis regarding impacts to Winona, MN was separated due to the portion of the CP rail line in Winona (see pp. 3.2-32). SEA also conducted a full analysis regarding the impacts of the proposed project on the City of Goodview, as discussed in full detail in the appropriately corresponding portion of the DEIS (Section 3.2).

To analyze the potential impacts on the communities adjacent to the I&M rail line would require an evaluation of the amount of trains currently using the I&M rail line. This would have required DM&E to make an assessment of the impacts of the total rail traffic in relevance to another rail carrier. SEa determined that the I&M activities were outside of the scope of this proposed action.

Factor: F02E-Analysis - Results

0

Restatement 007728 1

The commentator finds it unacceptable that in the entire Draft EIS no mention is made of impacts that this project will have on Winona, MN. The commentator requests that the scope of the Board's study be expanded to include impacts on Winona and that a new Draft EIS that includes this information be opened to the public for comment.

Response

Impacts of the proposed DM&E expansion on Winona, MN were discussed in Section 3.2 of the Draft EIS. Tables 3.2-13 and 3.2-14 describe the anticipated increase in noise at both the 65dba and 70dba levels as they pertain to all levels of rail operation (20 MNT, 50 MNT, and 100 MNT). The analysis regarding impacts to Winona, MN was separated from the other towns in Winona County due to a portion of the CP rail line traversing Winona (see pp. 3.2-32).

Factor: F02D-Analysis - Mitigation

0

Restatement 007753 1

The commentator states SEA determined it appropriate to consider the potential impact along the Canadian Pacific line in Winona, however noise level appears to be the only concern affecting Winona that is substantively analyzed with the draft EIS.

Response

SEA considered all impacts of the proposed project through the terminus of the DM&E line. This included safety, transportation and noise impacts.

Factor: F03B-Process - NEPA Compliance

48

Restatement 008099 1

Several commenters requested preparation of a supplemental EIS or a second or revised Draft EIS. Some commenters said the Draft EIS was incomplete and incorrect, and suggested withdrawing the Draft EIS and re-issuing a new, complete one at DM&E' cost. One commenter cited 40 CFR 1502.9(c)(1), which states that a supplemental EIS is needed when new circumstances or information about the project come to light, saying that this is the case here. A commenter disagreed with the preliminary conclusions on alternatives in the Draft EIS, claiming that with more study and preparation of a new Draft EIS, the Board will discover that the no-build option is the best. One commenter pointed out that a second Draft EIS would enable the Board to document unreferenced materials and complete studies, including the project design information in Volume VIII-B, appendix L, 4-1. Another commenter said a supplemental EIS should be prepared to provide additional information analyzing grade crossing delays for public comment.

One commenter suggested applying a tiered method for a Draft supplemental EIS, in which SEA would provide supplemental information for comment in specific areas needing supplementation. The commenter cited 40 CFR 1508.28 in support of this approach. Another commenter said the Final EIS should have a comment period.

Response

According to the Council on Environmental Quality's (CEQ) guidelines for implementing NEPA at 40 CFR 1502.9(c)(1), agencies are required to prepare a supplemental EIS if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

Since the issuance of the Draft EIS, DM&E has not made substantial changes to its proposed project nor have significant new circumstances or information come to light. In fact, SEA's analyses and many of the conclusions and recommendations in the Final EIS remain essentially the same as those in the Draft EIS. Although EPA previously recommended that a supplemental EIS be prepared in this case, EPA has recently indicated that a supplemental EIS is not required. See EPA letter, Final EIS, Appendix C. In the CEQ guidance Forty Most Asked Questions Concerning CEQ's NEPA Regulations (Forty Questions), the answer to Question 6(a) states "that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS." Also, according to answer 4(b) in Forty Questions, if the agency has not determined a preferred alternative or alternatives before issuance of the Draft EIS, it does not need to designate the preferred alternative or alternatives until the Final EIS. SEA's approach is consistent with Forty Questions.

This case is not like other cases where a supplemental EIS has been prepared. For example, in Somerset R. Corp. - Constr. - Niagra County, NY., 366 I.C.C. 144 (1982), cited by one commenter, the Draft EIS and Final EIS was prepared analyzing the environmental impacts of a construction proposal that was then denied by the ICC.

The applicant subsequently filed another application seeking authority to construct the rail line over another route. A supplemental EIS was prepared to analyze the environmental impacts over this new route. Therefore, the Somerset case is nothing like DM&E, since the preparation of the supplemental EIS in Somerset was triggered by an entirely new construction application.

Factor: F03D-Process - STB policy, process

48

Restatement

008099

1

Several commenters requested preparation of a supplemental EIS or a second or revised Draft EIS. Some commenters said the Draft EIS was incomplete and incorrect, and suggested withdrawing the Draft EIS and re-issuing a new, complete one at DM&E' cost. One commenter cited 40 CFR 1502.9(c)(1), which states that a supplemental EIS is needed when new circumstances or information about the project come to light, saying that this is the case here. A commenter disagreed with the preliminary conclusions on alternatives in the Draft EIS, claiming that with more study and preparation of a new Draft EIS, the Board will discover that the no-build option is the best. One commenter pointed out that a second Draft EIS would enable the Board to document unreferenced materials and complete studies, including the project design information in Volume VIII-B, appendix L, 4-1. Another commenter said a supplemental EIS should be prepared to provide additional information analyzing grade crossing delays for public comment.

One commenter suggested applying a tiered method for a Draft supplemental EIS, in which SEA would provide supplemental information for comment in specific areas needing supplementation. The commenter cited 40 CFR 1508.28 in support of this approach. Another commenter said the Final EIS should have a comment period.

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Factor: F02E-Analysis - Results

48

Restatement 008099 1

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Factor: F02D-Analysis - Mitigation

0

Restatement 008660 1

The commentor states DM&E should upgrade its track through Olmsted County, Minnesota and through Rochester, Minnesota, but only if robust mitigation as described later in this document is ordered. Rational for the mitigation: Normal development in any area must maintain the impacts on surrounding are in a condition not worse than it was before said development.

Response

11/15/2001

Similar

SEA has recommended that the proposed project follow the existing line through Rochester and Olmsted County. Specific mitigation measures are presented in Chapter 12 of this Final EIS.

Factor: F02B-Analysis - Existing Conditions

0

Restatement 008711 1

The commenter opposes the future expansion and development of the DM&E Railroad.

Response

SEA has noted the opposition of this project by the commenter.

Factor: F02D-Analysis - Mitigation

0

Restatement 001093 1

One commenter raised concerns about the Owatonna Community Partnership Agreement, which is the negotiated agreement between Owatonna, MN and DM&E. The commenter said specific issues relating to sound, property value and crossing delays were not incorporated into the agreement and the commenter hoped that the Board would address such issues. The commenter questioned the determination in the Draft EIS that because Owatonna had withdrawn its bypass proposal, it is no longer being considered, even though SEA indicated in the Draft EIS that the Owatonna Bypass would be reasonable and feasible.

Response

The purpose of negotiated agreements is to arrive at voluntary, mutually satisfactory arrangements between the railroads and the affected parties. Therefore, it would be inappropriate for SEA or the Board to intervene formally in the parties' negotiations, or to impose restrictions on the content or extent of the negotiations. The Board's practice is generally to require compliance with the terms of all negotiated agreements submitted to the agency in lieu of the local and site-specific mitigation that the agreements would replace. Regional and systemwide mitigation generally is not affected by negotiated agreements. In the Draft EIS, SEA indicated that the Owatonna Bypass would be reasonable and feasible, but dropped it from further consideration after Owatonna withdrew it. The decision to do so was appropriate and consistent with NEPA, because SEA's analysis showed that the Owatonna Bypass is not environmentally superior to the other Owatonna alternatives. Rather, the environmental impacts associated with the Owatonna Bypass are essentially the same as those associated with the other Owatonna alternatives, and the Owatonna Bypass would largely shift those impacts from one location to another.

Factor: F03D-Process - STB policy, process

0

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Factor: F02E-Analysis - Results

0

Restatement 002750 1

The commentor states that the STB has concluded that additional information is needed to assess the alternatives for the Olmsted County area, and specifically has requested more information from interested parties on the three alternatives studied: no-build, southern bypass, and mitigation along the existing right-of-way.

Response

Chapter 9 of this Final provides additional information related to Olmsted County and the potential for impacts to occur under each alternative, R-1, R-2, R-3, and R-4. Additional analysis included topographic and geographic impacts and emergency response capabilities.

Factor: F02D-Analysis - Mitigation

33

Restatement 005348 1

Several commentors are concerned over the lack of communication with DM&E and SEA. The public was told that SEA encouraged DM&E to "communicated with affected residents" and use their input to develop mitigation alternatives. No such contact has been made. The City's official position is that there are no negotiations taking place between the City of Mankato and DM&E, and there is no effective agreement between the City of Mankato. DM&E shall use the mitigation plan to design engineered plans for the improvements and mitigative measures. The engineered plans shall be submitted to the City of Mankato for review and approval. DM&E shall construct the improvements depicted in the mitigation plan currently with extension into the Powder River Basin or construction of any new main line or related improvements within the City of Mankato. The DM&E offer to the City of Rochester is completely inadequate. It does not meet what the Minnesota Department of Transportation has outlined as the minimum requirements to accommodate the upgrade. The manufacturing, agriculture, and energy sectors of the regional economy depend on a viable transportation system. The people of Rochester like the other towns and cities along the DM&E line, should not be expected to sacrifice in order to accommodate the upgrade. It is incumbent upon you and the DM&E to come back to the table with a realistic proposal that makes sense for the people of the Rochester area. The community partnership agreement between the DM&E and the City of Owatonna Minnesota is terribly flawed and warrants investigation. The parties were unable to reach agreement on most of issues that could broadly be described as involving "mitigation". The City of Owatonna justifies relied upon the environmental review process to deal with all of these issues. Developing environmental protections at this point in the process is not only consistent with the very essence of the definition of "environmental impact study" but also mandated by federal law. The public urges the STB to review carefully the detailed comments that have been forwarded to the Board by Blue Earth County, Olmsted County, Mankato, Rochester, Owatonna, City of Tracy, Skyline and other communities. In addition, the filing of the Community Partnership Agreement between the City of Philip and the DM&E Railroad should be included in the STB Final EIS prescribing the project's mitigation requirements. The STB needs to provide significant noise and safety mitigation along the corridor many homeowners and businesses in southern Minnesota will be harmed by this project states many of the community agreements were made under the influence of statements from the railroad such as "If you don't take this offer, the STB won't give you anything" and variations thereof. Since the STB has not taken the trouble to discuss these statements by the railroad, the STB has become a partner to intimidation.

One commentor states the mitigation plan exceeds that unconsummated partnership agreement in some aspects principally, the trackbed mitigation, the acoustic barrier walls, and addition of three grade separations. The delta cost of the mitigation that exceeds the unconsummated partnership agreement is estimated at approximately \$40.3M to \$43M. Given that the mitigation does maintain the impact on the surrounding area in a condition not worse than it was before said development, then one should be able to justify the

expense in reduced loss of property value and reduced or eliminated environmental, traffic delay, accident and emergency losses.

One commentor indicated all the cities and County of Dodge, MN have agreed with the safety mitigation terms of the DM&E.

One commentor states there is no mechanism that binds the DM&E to the agreement and there is no recourse for failure of any party to achieve any of the agreed upon mitigative measures.

One commentor states United States Department of Transportation has reviewed the Draft EIS, and agrees with its basic premise that DM&E and communities affected by this project should strive to develop mutually agreed upon responses to its adverse impacts DOT also believes, however, that DM&E should ultimately be held responsible for implementing reasonable measures to address the consequences of its proposed operations.

One commentor states that the railroad and affected communities should meet, realizing that the former bears the onus of undertaking all reasonable measures and expenses to reduce in significant respect the major adverse effects of its proposal, and that the latter must cooperate and contribute to the resolution of the identified problems.

Response

SEA conducted an extensive analysis of each individual resources for each alternative. Findings were illustrated throughout the Draft EIS in both tabular as well as textual format to provide simplicity, as well as detailed explanations. Potential impacts to each resource are discussed in the appropriate section of the Draft EIS for all the alternatives. As appropriate, comparisons of the EPA threshold standards and potential increase due to the impacts of the proposed project are illustrated and explained for each relevant issue in the corresponding sections of the Draft EIS. Discussions were then summarized to reduce the likelihood of redundancy in the text.

Factor: F03C-Process - Public Outreach

48

Restatement 000028 1

Commenters expressed dissatisfaction with the public outreach campaign, indicating that interested citizens, including affected landowners, were not given the courtesy of receiving a copy of the document. Several commenters requested specific updates to the project mailing list so the appropriate parties receive necessary information. Additionally, when parties received the Draft EIS they were not instructed in regard to what role they had in the process. Commenters from different cities complained that SEA failed to properly notify affected landowners of public meetings and important changes in the project. Other commenters stated that their communities did not have an opportunity for a public meeting.

Although, according to the document, SEA instructed DM&E to discuss mitigation alternatives with the public, several landowners stated that they had to get information from newspapers and word of mouth. The City of Skyline stated they were not notified of the Southern Route Alternative (M-2) until fall 2000 and inaccurate information about alternatives demonstrates that SEA should have consulted with the City before publishing the Draft EIS. Commenters insisted that DM&E make a good faith effort to consult with affected parties, in accordance with the law, regarding any future decisions.

Response

SEA conducted an extensive outreach program to alert the affected public about the scoping process and encourage public response to the proposed project. SEA placed advertisements in 268 media sources and contacted 6,000 individuals with fliers asking if they would like to receive a copy of the full document. The Draft EIS was available in over 80 libraries in the project area. Appendix C of the Final EIS contains copies of additional outreach materials including postcards, press releases, newsletters, or other

notifications distributed since release of the Draft EIS. As stated above, SEA and the cooperating agencies reviewed and considered substantive comments on the Draft EIS, including corrections and clarifications regarding bypass routes and impacts to adjacent landowners. SEA has responded to issues regarding Mankato in Chapter 7 of the Final EIS.

Factor: F01C-Alternatives - Mankato Bypass

26

Restatement 000073 1

Many commenters opposed the Southern Route Alternative (M-2), the proposed route through the rural area outside Mankato. Other commenters opposed the M-3 route that would run through the city of Mankato.

Commenters opposed to the M-2 route stated that it would shift the burden from an urban corridor to a rural area, violate the Board' long-standing preference for the use of existing corridors, destroy the peace and tranquility in the Blue Earth River Valley, obstruct the city' further growth and development, have a disastrous impact on neighboring farms, homes, businesses, recreation areas and private communities. Commenters suggested that if DM&E must expand the track then it should use the existing rail corridor through the City of Mankato and instead of using money to purchase land for the M-2 route, purchase homes near the tracks. Several commenters also pointed out that if DM&E could not negotiate with the Railroad that currently owns the rail corridor, then they should not be permitted to expand the railroad.

Several commenters criticized DM&E for failing to notify the City of Skyline of the intent to construct the M-2 route at the base of the Skyline bluff. One commenter also stated that the Draft EIS failed to discuss the environmental and economic impacts of the M-2 route on the residents of Skyline and that the revised EIS should address these impacts if M-2 remains a viable alternative.

The commenters supporting the M-2 route and opposed to the M-3 route through the City of Mankato, stated concerns about disturbance and negative impacts of coal trains. These commenters stated that the in-city route will affect more people than the M-2 route, thus it is more beneficial for a larger percentage of the population for the train to run outside the city. These commenters supported the removal of the M-3 route from consideration.

Response

As described in Chapter 7, SEA completed a thorough evaluation of the Mankato Southern Route Alternative (M-2). Based on this evaluation, SEA determined that the Southern Route Alternative is the environmentally preferred alternative if the Board approves the proposed project. The evaluation in Chapter 7 discusses additional engineering information for the route and the potential impacts to the City of Skyline. Chapter 7 also includes a detailed description of the route and the potential environmental impacts. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, but in the alternative, M-3, should that route become feasible.

Factor: F03C-Process - Public Outreach

6

Restatement 000133 1

Several commenters indicated they had a favorable experience dealing with the DM&E Railroad. Others expressed gratitude for the opportunity to comment on the Draft EIS.

Response

SEA appreciates the involvement of the public in the environmental review process and encourages the continued cooperation between the public and DM&E.

Factor: F03D-Process - STB policy, process

Restatement 000155 1

A commenter asked for information on the Brookings, SD alternatives, particularly Alternative B-4: Bypass for all Rail Traffic. The commenter wondered if the Board could project an estimated cost for the Brookings Bypass and said that there was some confusion and discrepancy over the costs of the Bypass.

One commenter said the Draft EIS contained a deficient socioeconomic analysis of Brookings, SD property values and several commenters said the Final EIS needed to contain adequate socioeconomic studies of the Bypass options and state how the Bypass would affect residents, as well as the existing rail corridor, and include appropriate mitigation measures.

Another commenter said that DM&E needed to file a 404 permit application for the B-4 option, and the Draft EIS needed more data to compare Alternative B-4 and Alternative B-2: Reconstruction of Existing Rail Line option, so the commenter requested refiling of the Draft EIS. The commenter also said that any new Brookings, SD alternatives should prompt the preparation of additional Draft EISs and 404 permit applications, as well as including appropriate comment periods. The commenter said the Brookings Bypass was so complex that it deserved to be studied in a separate EIS, maybe in parallel with the Rochester, MN and Pierre, SD Bypasses. The Draft EIS should compare all proposed alignments, and the data for the Draft EIS and 404 safety studies needed to include end of the year information.

One commenter questioned whether the Board or the City of Brookings could force DM&E to abandon its own property and use other property for a Bypass.

Response

The Draft EIS examined 4 alternatives for the Brookings area in Chapter 4, Section 4.9 (Alternative B-1: No Action; Alternative B-2: Existing Rail Line; Alternative B-3: Existing Rail Line and Bypass for Coal Traffic; and Alternative B-4: Bypass for all Rail Traffic). The Draft EIS addressed impacts to Brookings area property values in Section 4.9.4.2 and socioeconomic impacts to the Brookings areas in Section 4.9.14.

As described in Chapter 4 of the Draft EIS and Chapter 6 of the Final EIS, SEA evaluated the original proposed Brookings Bypass and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. Construction and operation of the Bypass would not serve the purpose and need of the project because the Bypass would not improve service or access to existing shippers. Chapter 6 includes a description of SEA's evaluation, including a discussion of potential socioeconomic impacts, and the rationale for its determination of the environmentally preferred alternative. The Final EIS details SEA's recommended mitigation measures in Chapter 12.

Factor: F03B-Process - NEPA Compliance

43

Restatement 000167 1

DM&E commented that although the impacts of the project cannot be fully mitigated, public outreach efforts have led to support and agreement from most of the affected communities. But some commenters expressed dissatisfaction with the negotiated agreements agreed to by certain communities. One commenter said that the Mankato City Council reached an agreement with DM&E before the townspeople had their say, so the Board should take the comments of the townspeople into consideration. Another commenter said that community agreements would lose their value without the enforcement of whistle-free agreements.

Similar

One commenter said that the Draft EIS did not give the public enough information, so communities entered into negotiated agreements without enough information. According to the commenter, DM&E told communities that the railroad would give them more than the Board, and then put clauses in the agreements that limited public disclosure and prevented public comment. The commenter questioned how the Board could support this unfair process. The commenter also said the Draft EIS stated that local agreements could provide more mitigation than the Board could impose. The Owatonna, MN city council members who were for the Bypass said that DM&E has censored the city council' comments to the Board, so they are concerned that their actual comments will not be clear. They said if they remain silent the Board will not know of their problems, but if they reveal their problems, the Board may do nothing and the railroad will terminate the agreement, leaving them with nothing. Commenters from Owatonna also claimed that a statement in the Draft EIS that indicated that negotiated agreements with DM&E would supersede Board imposed environmental conditions was incorrect. The commenters said that they have always expected the Board to impose environmental conditions, even though they have a negotiated agreement in place, and they even pointed to a specific provision in the community agreement allowing Board conditions to be enforced.

One commenter said that negotiated agreements implied that the no-build alternative cannot be an option, since communities who have entered into negotiated agreements cannot support the no-build option. Since all alternatives must be considered, the commenter said that the Board' support for negotiated agreements is improper. Another commenter said that while mutually agreeable mitigation would be beneficial, the Board should put forth parameters and guidelines for negotiated agreements, so the parties' responsibilities would be clear. One commenter said that the railroad has been negotiating with communities over issues not within the communities' jurisdiction, so the Board should make sure all the appropriate parties become involved in the negotiating process. The City of Mankato specifically requested the Board to review its mitigation plan and increase mitigation if the Board feels necessary. The City of Mankato even put a clause in its mitigation plan to have disputes between the city and DM&E come before the Board for resolution.

Response

The Board encourages the development of negotiated agreements between the Applicant and affected communities, including groups of communities and other entities such as state and local agencies. These agreements can be extremely helpful and effective in addressing specific local and regional environmental and safety concerns. Generally, these privately negotiated solutions between an Applicant railroad and some or all of the communities along particular rail corridors or other appropriate entities are more effective, and in some cases, more far-reaching than any environmental mitigation options the Board could impose unilaterally if it grants approval to a particular rail construction project. Therefore, when such agreements are submitted to it, the Board generally will impose these negotiated agreements as conditions to approved applications, and these agreements generally will substitute for specific local and site-specific environmental mitigation for a community that otherwise would be imposed. Regional and system-wide mitigation generally is not affected by negotiated agreements. Moreover, to encourage and give effect to negotiated solutions whenever possible, the opportunity to negotiate agreements will remain available throughout the oversight process to replace local and site-specific environmental mitigation imposed by the agency. The Board will require compliance with the terms of all negotiated agreements submitted to it during oversight by imposing appropriate environmental conditions to replace the local and site-specific mitigation previously imposed.

Factor: F02D-Analysis - Mitigation

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Restatement

000194

1

The commentor states many of the basic assumptions regarding needed environmental mitigation measures rely on detailed studies completed by the STB and its consultants on traffic impacts, air quality impacts, noise and vibration impacts, and environmental justice impacts. The community will need time to review all the information, retain consultant services, and prepare an equally detailed response.

Response

The public review period from the time of the publication of the Draft EIS to the publication of the Final EIS will be over one year. SEA believes that this review time, coupled with public and agency comments has allowed for meaningful input into the process. The proposed mitigation presented in the Draft EIS has been expanded to further capture potential impacts identified for the proposed project. SEA has made every effort to make the process impartial and technically sound.

Factor: F03C-Process - Public Outreach

14

Restatement 000260 1

Many commenters commented on the adequacy and accessibility of the Draft EIS. Commenters stated that the Draft EIS was poorly organized. Commenters complained that the lack of an index makes navigation through the paper text of the document laborious and use of the CD-ROM version impossible. One commenter indicated that the packaging of the document, both in paper and CD-ROM format, appears to be purposefully obstructive, rather than helpful.

In addition to the inclusion of an index, commenters suggest that general terms, and terms not commonly known, should be defined within the document. Commenters attribute the complexity of the document to illegible graphs, a convoluted numbering system, inadequate and antiquated maps, and repetitive text with randomly embedded information.

The lack of designated routes and maps in the Draft EIS and the indications within the document that the final design is not complete makes it difficult to determine which lands would be affected. Commenters requested a complete business plan and specific information about rail routes and applicable proposed mitigation.

Response

SEA and the cooperating agencies worked hard to provide a comprehensive environmental impact analysis in the Draft EIS. The complexity and broad geographic scope of the DM&E project resulted in a large, complex document. Where the public has identified specific areas that are unclear or confusing, SEA and the cooperating agencies have provided additional clarifying information and responses to those specific comments in this Final EIS. This Final EIS provides additional clarifying information regarding the recommended mitigation in Chapter 12. As suggested by commenters, the Final EIS contains an index for more convenient navigation through the document.

Factor: F01D-Alternatives - Owatonna Connections

17

Restatement 000315 1

Commenters supported the bypass of Owatonna because the rural areas have fewer people who would be affected and train horns do not have to blow as frequently in rural areas. Several commenters opposed the Owatonna bypass because the bypass would result in greater impacts to wildlife and native plant habitat. One commenter noted that the bypass would allow trains to change direction and pass through the community twice.

One commenter supported the "No-Build" Alternative for the DM&E lines east of Owatonna. Another commenter stated that the Draft EIS descriptions of the Owatonna bypass options do not match the maps in Volume V. Alternative O-2, O-4 and O-5 are not shown in the 404 permit application materials submitted to the Army Corps of Engineers and the Draft EIS does not explain why they were dropped from consideration.

Response

As described in Chapter 8, SEA completed a thorough evaluation of the alternative routes through the Owatonna area. Based on this evaluation, SEA has determined that Alternative O-4 is the environmentally preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the environmentally preferred alternative, if it were a feasible alternative. The alternative is not feasible because agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative. Chapter 8 includes a complete discussion of the Owatonna alternatives evaluation and SEA's rationale for its determination.

Factor: F01H-Alternatives - Yards

22

Restatement 000512 1

Several commenters opposed the construction of a rail yard in the vicinity of their property because of noise disturbance, road traffic, dangerous emissions, frequent road closure, or diminished scenic view. One commenter stated that the closure of Road #13 to build the staging yard between Utica and Lewiston, MN would cause delays for emergency response vehicles. One commenter supported the Option B rail yard because few natural resources would be affected and reiterated their opposition to the plan to put the rail yard in Garvin Brook. This commenter also opposed a proposed rail yard in Minneopa State Park, Option A, because of potential negative impacts, and called for the elimination of the alternative from consideration.

Another commenter supported the Option A alternative because the rail yard would not actually go in the park, but next to the park. This commenter stated that environmental impacts from Option B would be worse than Option A. Another commenter urged the Board to deny the request for a staging yard in the Shag Road location and asked for concessions and remuneration if the Board approves the project. The tribes from the Fort Berthold Indian Reservation asked to help select the final location of Staging and Marshalling areas in the event the proposed project is approved and for clarity on the plans for construction.

Response

Chapter 4 includes additional discussion and evaluation of the Middle East Staging and Marshalling Yard and alternative locations. Based on this evaluation, SEA has determined that Option B is the environmentally preferred alternative, if the Board approves the project. Chapter 4 includes discussion of SEA's evaluation of potential impacts for each option, including the potential impacts to wetlands. The final locations of other Staging and Marshalling yards are determined by the selection of the preferred alternative, Alternative C.

Factor: F01M-Alternatives - Other

4

Restatement 000513 1

One commenter was concerned that small towns like Cambria, Minnesota do not have a voice in the decision making. This commenter stated that the increase in rail traffic would make it hard for the citizens of Cambria to travel out of town for work and school. This commenter also pointed out that emergency vehicles could be obstructed from entering or exiting the town.

One commenter criticized DM&E' unwillingness to reasonably negotiate on a proposed tunnel in Rochester and asked that the Board require DM&E' cooperation.

Response

SEA and the cooperating agencies implemented an extensive outreach plan with the specific intent of providing equal opportunity for the affected public to voice concerns. SEA and the cooperating agencies then reviewed the written and oral comments on the Draft EIS. The Final EIS provides clarifying information and responses to the substantive comments on the Draft EIS. The Board and the cooperating agencies will base the final decision on an objective assessment of the complete available information. The Board will consider the Draft EIS, the Final EIS, public comments, and responses to public comments in its final decision regarding the proposed project.

In response to the comment regarding impacts to small towns, if the project is approved, the Board will also require DM&E to implement mitigation to address environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation for community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended mitigation in Chapter 12.

In response to the comment regarding the proposed tunnel in Rochester, SEA notes that the City of Rochester considered several options to mitigate train impacts in Rochester and developed the Rochester Bypass Alternative as its preferred alternative for SEA to evaluate in the Draft EIS.

SEA encourages DM&E and communities to negotiate, however SEA does not coordinate nor dictate the results of these negotiations.

Factor:

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Restatement

001779

8

One commenter indicated a concern that the existing train bridge crossing the Missouri River at Pierre is incapable of handling additional rail traffic. The commenter stated that the bridge is very old and that it would be an environmental disaster if the bridge collapsed into the river. The commenter suggested that it would be beneficial to both DM&E and the community of Pierre/Ft. Pierre if DM&E constructed a new bridge several miles downstream where there is no concern for stability and where navigation around fishermen and recreational boaters would not be an issue.

Response

Chapter 2.2.9 of the Draft EIS addresses the Missouri River Bridge and acknowledges the inability of the existing bridge to support increased train traffic. The Draft EIS stated that DM&E believes it may be possible to reinforce the existing bridge to allow for safe operation of trains. However, because of the need for additional studies, DM&E developed a second alternative that would include construction of a new bridge across the Missouri River, just upstream of the location of the existing bridge. SEA evaluated the potential environmental impacts of both alternatives. Chapter 2.2.9 includes a discussion of the alternatives for the Missouri River Bridge.

In response to the suggestion that DM&E should build the bypass and construct a new bridge downstream, SEA has determined that the existing route through Pierre, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project (see Chapter 5 of this Final EIS).

Factor:

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Restatement

000315

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Commenters supported the bypass of Owatonna because the rural areas have fewer people who would be affected and train horns do not have to blow as frequently in rural areas. Several commenters opposed the Owatonna bypass because the bypass would result in greater impacts to wildlife and native plant habitat. One commenter noted that the bypass would allow trains to change direction and pass through the community twice.

One commenter supported the "No-Build" Alternative for the DM&E lines east of Owatonna. Another commenter stated that the Draft EIS descriptions of the Owatonna bypass options do not match the maps in Volume V. Alternative 0-2, 0-4 and 0-5 are not shown in the 404 permit application materials submitted to the Army Corps of Engineers and the Draft EIS does not explain why they were dropped from consideration.

Response

As described in Chapter 8, SEA completed a thorough evaluation of the alternative routes through the Owatonna area. Based on this evaluation, SEA has determined that Alternative O-4 is the environmentally preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the environmentally preferred alternative, if it were a feasible alternative. The alternative is not feasible because agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative. Chapter 8 includes a complete discussion of the Owatonna alternatives evaluation and SEA's rationale for its determination.

Factor: F03C-Process - Public Outreach

55

Restatement 000009 1

Many commenters expressed concern over the length and complexity of the Draft EIS and requested an extension of the comment period. Commenters encouraged extensions between 90 days and 180 days. Other commenters asserted that the proposed comment period should not be extended because a 90-day public comment period is more than adequate. Commenters urging adherence to the 90-day comment period cited the importance of expediting the project.

Response

In response to public comments, the Board extended the public comment period for an additional 60 days to a total of 152 days (from September 27, 2000 to March 6, 2001). This extended comment period allowed communities, organizations, and individuals to review the Draft EIS and prepare comments. The Board has determined that the public had sufficient opportunity to comment on the Draft EIS and is not reissuing the Draft EIS.

Factor: F03B-Process - NEPA Compliance 6

Restatement 000013 1

Several commenters requested that local and state agencies and communities be given more time and opportunity to participate in the project. One commenter requested that local and state agencies be given more time to review the Draft EIS, while another commenter requested that a public hearing be scheduled in Owatonna, MN in addition to the meetings scheduled in Mankato and Rochester, MN, since Owatonna residents might not be able to travel to Mankato or Rochester, and Owatonna would be significantly impacted by the proposed project. One commenter stated that taxpaying citizens have the right to decide their quality of life and they should not be controlled by Government entities.

Another commenter said voters need to know the differences between the various project options in concrete financial terms. For example, the commenter questioned how the through city and Bypass options for Olmstead County, MN would affect taxes.

Response

SEA conducted extensive scoping to encourage public participation in the EIS process. The Draft EIS in Section 1.7 and the Final EIS in Chapter 1 discuss the scoping and public outreach activities that were conducted as part of the Powder River Basin Expansion Project environmental review process. SEA initially proposed a 90-day comment period for the Draft EIS, but after receiving numerous requests, extended the comment period for an additional 60 days. After the Draft EIS was issued, SEA held oral hearings at appropriate locations. Chapter 9 of the Final EIS describes the additional analysis for the Rochester area alternatives including a discussion of socioeconomic impacts.

Factor: F04A-Project - Support 108

Restatement 000016 1

Many commenters gave full support to the DM&E project, urging approval of Alternative C and the disposal of the "No-Action" Alternative A. Commenters cited safety as a benefit to the project because the DM&E project will repair deteriorating lines and eliminate the need for a high volume of trucks on the highways. Commenters supported the project because they would be both customers and employees of the proposed DM&E Railroad. Commenters stated that jobs created by construction and maintenance of the railroad would invigorate the local economies and bring new tax revenue to community governments. Many commenters also supported the proposed project because it will support the farm economy by improving transportation efficiency and reducing transportation cost for farm commodities. Commenters urged the Board to move forward with the project on schedule.

One commenter gave partial support to the project but indicated that the Board should rely on objective analysis by qualified experts.

Response

As described in the Draft EIS, the applicant's preferred alternative is Alternative C. In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Factor: F03C-Process - Public Outreach

4

Restatement

000023

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Commenters raised several complaints regarding the public meetings, including inadequate meeting facilities and presentations lacking in content and detail. Concerned parties suggested that the use of visual aids, showing the extent of the project and details of the alternatives under consideration, and maps, included in the overhead presentation, would increase the benefit of the meetings to the public. One commenter maintained that SEA staff should stay until the advertised time of 10:00 PM to ensure that attendees arriving late receive the same information.

Response

SEA held 12 public meetings in approximately 2 weeks, and in some areas held afternoon and evening meetings, with the principle goal of receiving public comments in response to the project. During preparation for the public meetings, SEA focused on determining the best locations to accommodate all interested parties. SEA considered the size of expected turnout, convenience of location, constraints due to weather conditions, and meeting space availability in their efforts to encourage public participation.

SEA designed the presentation at the beginning of the meetings to give a brief overview of the project. Content and detail in the presentations was limited because the primary focus of the meetings was to provide the public with an opportunity to comment. Several information packets were available for all participants, including detailed packets for all media sources. The public was encouraged to read the Draft EIS, which was available at all of the meetings and at over 80 libraries in the project area, for technical data and detailed maps. SEA staff remained at the meeting site as long as necessary depending on the attendance of the meeting. In the cases where a large number of community members attended the meeting, SEA staff stayed late to give each person an opportunity to make a comment. When few people showed up for the meeting, SEA staff closed the meeting after all commenters spoke.

Factor:

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Restatement

007554

157

The commentor states it had to be obvious to SEA, even without the public hearing input, that specific mitigation measures were required for reconstruction through Rochester. Putting it off on the public is non-compliant.

Response

SEA allowed the public the opportunity to provide comments on specific mitigation. This was done as part of the public comment process. SEA recognizes the need for mitigation measures in Rochester. Chapter 12 of this Final EIS specifies proposed measures to mitigate impacts.

Factor:

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Restatement 007541 16

The commentor states after evaluating potential and appropriate environmental mitigation through the EIS process, the Board is required to ensure that such mitigation is reasonably related to the purpose of the DM&E project: to assist shippers with their desire to obtain competitive, reliable, and efficient coal transportation service, and to ensure the continued viability of DM&E itself. In particular, SEA must be mindful that the imposition of individual or cumulative environmental mitigation measures that are operationally and/or financially unviable.

Response

SEA has made every effort to recommend mitigation measures that reflect the true need for impact relief. These measures are identified in Chapter 12 of this Final EIS. Mitigation measures are intended to provide a high level of safety and accessibility while protecting natural and man-made resources.

Factor:

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Restatement 007546 295

Several commenters expressed dissatisfaction with the size and format of the Draft EIS. Commenters stated that the Draft EIS is so large and technical that it prevents the public from adequately understanding and commenting on the project. Other commenters said that they found the Draft EIS poorly organized and hard to read, and the web version was hard to access and search. One commenter said that the poor quality of the Draft EIS suggested that either the Board had an inadequate staff or that the Board used the format of the Draft EIS to hide information from the public.

One commenter complained that the Draft EIS was too repetitive, despite the assertion on page 3-1 of volume VIII-B, Appendix L that stated that information available in other documents would not be repeated in the Draft EIS. The commenter pointed to specific examples: Section 3.2 repeats III-A - Section 4.1.1 and 4.2.1; Section 3.3 repeats III-A, 4.1.14 and 4.2.14; Section 3.4 repeats VII-B - Appendix H; Sections 4.1 through 4.14 repeats information that is elsewhere in the Draft EIS.

Response

SEA prepared the Draft EIS to identify and evaluate potential environmental impacts of the DM&E proposed rail line construction and operation to coal mines in the Powder River Basin and to inform Federal, state, and local agencies, affected communities, Native American Tribes, and the general public about the potential environmental effects of the proposed project. SEA initially proposed a 90-day comment period, double the minimum time required by the Council on Environmental Quality's (CEQ) regulations for implementing NEPA at 40 CFR 1506.10, but after receiving numerous requests, stating that more time was needed to review and comment on the document because of its size and the complexity of the project, SEA extended the comment period for an additional 60 days.

The Draft EIS was organized consistent with NEPA and CEQ guidelines at 40 CFR 1502.10. It was intended to provide clear and concise information to the public and agency decision makers on the proposed project. The Draft EIS described the proposed project, alternatives, existing environment of the proposed project, and the potential environmental impacts associated with the proposed project. Chapters and specific topics within each chapter were outlined in the Table of Contents and numerically coded to aid the reader in locating individual areas of interest. Tables and figures were listed numerically by the chapter in which they occurred. Appendices were denoted with alphabetic characters and included at the end of the EIS. Volumes II and III of the Draft EIS organized information by region. Volume II addressed the proposed project impacts in Minnesota and Volume III addressed the proposed project impacts in South Dakota and Wyoming.

Some repetition was inevitable, given the fact that issues are sometimes overlapping and interrelated.

Factor:

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Restatement 007546 296

Some commenters expressed dissatisfaction with the Board's scoping process. One commenter said the scoping notices did not effectively notify everyone. According to the commenter, scoping guidance documents indicate that press releases to newspapers, radio and television are not sufficient to adequately notify all affected parties.

One commenter said because the Draft EIS leaves some open-ended questions, the issues should have been more clearly defined during the scoping process. For example, the commenter notes, the Draft EIS stated that DM&E needs to submit grade crossing plans to authorities, but the Draft EIS does not put forth a plan for evaluation of the process DM&E will use, and, since the plans are not included in the Draft EIS, the public will not have an opportunity to comment on DM&E's grade crossing plans.

Response

Opportunities for public participation in the environmental review process in this case including scoping have been extensive. As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, the SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. Oral hearings also were held in several communities after issuance of the Draft EIS.

NEPA does not require that all issues be completely defined during scoping. In fact, one of the purposes of allowing public participation throughout the process is to allow the public to raise previously unforeseen environmental impacts, and then to analyze issues and information beyond those originally contemplated in the Draft or Final EIS. The CEQ guidance Forty Most Asked Questions Concerning CEQ's NEPA Regulations (Forty Questions) specifically allows agencies to solicit public input in how best to resolve complex environmental matters by requesting further information in the Draft EIS. The answer to Question 6(a) in Forty Questions states that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS.

Factor:

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Restatement 008716 31

The commentator stated that the DEIS does not mention the potential development of the land south of Angostura Lake. The commentator indicated that because the DEIS must consider future impacts, any land within a 5 mile radius of Angostura must be considered development and recreational property. Loss in property tax to the county, decrease in land value for present owners, and loss of recreational enjoyment should all be considered.

Response

SEA considered the potential development of the land south of Angostura Lake and determined that this did not meet the spatial or temporal boundaries for consideration under cumulative impacts. No direct correlation between future property values and the DM&E project could be ascertained.

Factor:

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Restatement 000313 4

Commenters stated that the Board lacked the authority to require DM&E to construct bypasses around cities as mandatory mitigation conditions on its approval of DM&E's project. The commenters said that the Board did not have the authority to place conditions upon activities connected to the proposed rebuild, and only had jurisdiction over the proposed new construction.

On the other hand, the commenters state that even if the Board has the authority to impose the city bypass conditions, such action would contravene existing laws. According to the commenters, carrying out bypass conditions would require DM&E to file additional applications with the Board, because the bypasses would be new construction cases, requiring separate Board approval before implementation. The commenters state that placing bypass conditions on the current construction would make little sense, because the Board would have to independently evaluate each bypass proposal as a new construction case. Also, the Staggers Act prevents the Board from directing the amount and type of traffic DM&E can move over its rail lines. Thus, the commenters state that even if the bypasses were built, the Board could not force DM&E to utilize the bypasses.

Response

As the Draft EIS and this Final EIS explain, this EIS addresses the existing line, as well as the Extension Alternatives because the increase in operations over the existing line would not occur but for the new construction project and the cooperating agencies need information on the existing line to undertake their decisionmaking process.

SEA has properly considered the bypasses as part of its environmental review in this case. NEPA requires the Board to take a hard look at the environmental consequences of its decisions, and the responsibility to consider reasonable and feasible alternatives to a proposed transaction is at the heart of the NEPA analysis. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 194 (D.C. Cir), cert. denied, 502 U.S. 994 (1991); 42 USC 4332(2)(E). Reasonable and feasible alternatives to a construction proposal are defined as alternatives that would satisfy the railroad's objectives but might be environmentally preferable to the route that the railroad originally proposed. Such an alternative could include a bypass.

Congress also gave the Board broad authority to modify rail construction proposals and impose conditions on the Board's approval of a proposal. 49 U.S.C. 10901(c). The Board can impose conditions, including conditions designed to mitigate environmental impacts, so long as they are supported by the record, there is a sufficient nexus between the condition imposed and the transaction before the Board, and the condition is reasonable. See *United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994). In rail construction cases, the Board typically has used its conditioning power to impose conditions such as grade crossing protection, erosion control, reseeding and revegetation of disturbed areas, and advanced notification of train schedules to emergency service providers. But additional types of mitigation – including ordering a bypass – could be found to be reasonable if necessary to remedy a severe problem resulting from the proposal itself.

In short, the Board has the authority to require a bypass, where reasonable, as an environmental mitigation condition. Should the Board do so, its order imposing a bypass condition on its approval of a construction proposal would constitute Board authorization for the bypass. Whether some additional public notice and opportunity for comment would be needed in such a situation would depend upon whether the public review and comment obtained through the environmental review process had sufficiently addressed the bypass.

Factor:

0

Restatement 007537 63

One commenter said adoption of the Mankato, MN southern route, known as Alternative M-2, would lead to grave environmental consequences, greater than Alternative M-3, through town over the existing right-of-way, so adopting this alternative would violate NEPA. Other commenters recommended that SEA prepare a separate Draft EIS for the M-2 route and then have a thirty-day comment period on it, in order to allow the public to evaluate the Mankato alternatives properly.

Response

SEA believes consideration of the Mankato alternatives has been adequate. The Draft EIS thoroughly addressed the Mankato alternatives in Section 3.3. The Final EIS contains additional analysis and discussion of these alternatives in Chapter 7.

The fact that the Mankato southern route allegedly would have more severe environmental impacts than the M-3 alternative does not preclude SEA from recommending that alternative, or the Board from approving it. While NEPA requires the Board to take a hard look at the environmental consequences of proposals to construct new rail lines, it does not mandate a particular result. Thus, once the adverse environmental effects of a proposal have been adequately identified and evaluated, the Board may conclude that other benefits outweigh the environmental harm of a particular alternative.

Factor: 0

Restatement 007547 68

The commentor indicates given the inadequacies of the existing Draft EIS, from route description to impact consideration, the STB should order a preparation of a second Draft EIS to compel the DM&E to respond to the issues raised about the proposed M-2 route and to allow for public comment about that route.

Response

SEA believes that the Draft EIS and the Final EIS follows the procedural requirements of NEPA and adequately analyzes the potential impacts of the proposed project. This Final EIS has attempted to respond to concerns raised during the comment period. Chapter 7 of this Final EIS specifically discusses impacts related to the Mankato area.

Factor: 0

Restatement 007546 81

The commentor stated the Draft EIS technical review of the natural resource impacts are perfunctory and superficial especially as related to geology, hydrology, wetlands and ecology. Brief treatment of these subjects affects the Draft EIS conclusions.

Response

SEA believes that the natural resource analysis adequately captured both the existing conditions and potential impacts associated with the proposed project. Additional evaluation was conducted and presented in this Final EIS. These evaluations were in response to specific concerns raised by commenters and agencies as part of the Draft EIS public review process.

Factor: 0

Restatement 007546 82

The commentor states the difficulty of predicting the outcome of environmental impacts in relation to hydrology and ecology is not discussed and no attempt is made to clearly define either the environmental impacts or the environmental risks.

Response

SEA agrees that there can be difficulties associated with determining impacts related to hydrologic and ecological conditions. SEA has provided additional discussion of environmental and geologic impacts in Chapter 9 of this Final EIS. SEA specifically considered the potential impacts of the proposed bypass on karst topography.

Factor:**Restatement**

005348

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Several commentors are concerned over the lack of communication with DM&E and SEA. The public was told that SEA encouraged DM&E to "communicated with affected residents" and use their input to develop mitigation alternatives. No such contact has been made. The City's official position is that there are no negotiations taking place between the City of Mankato and DM&E, and there is no effective agreement between the City of Mankato. DM&E shall use the mitigation plan to design engineered plans for the improvements and mitigative measures. The engineered plans shall be submitted to the City of Mankato for review and approval. DM&E shall construct the improvements depicted in the mitigation plan currently with extension into the Powder River Basin or construction of any new main line or related improvements within the City of Mankato.

The DM&E offer to the City of Rochester is completely inadequate. It does not meet what the Minnesota Department of Transportation has outlines as the minimum requirements to accommodate the upgrade. The manufacturing, agriculture, and energy sectors of the regional economy depend on a viable transportation system. The people of Rochester like the other towns and cities along the DM&E line, should not be expected to sacrifice in order to accommodate the upgrade. It is incumbent upon you and the DM&E to come back to the table with a realistic proposal that makes sense for the people of the Rochester area. The community partnership agreement between the DM&E and the City of Owatonna Minnesota is terribly flawed and warrants investigation. The parties were unable to reach agreement on most of issues that could broadly be described as involving "mitigation". The City of Owatonna justifies relied upon the environmental review process to deal with all of these issues. Developing environmental protections at this point in the process is not only consistent with the very essence of the definition of "environmental impact study" but also mandated by federal law. The public urges the STB to review carefully the detailed comments that have been forwarded to the Board by Blue Earth County, Olmsted County, Mankato, Rochester, Owatonna, City of Tracy, Skyline and other communities. In addition, the filing of the Community Partnership Agreement between the City of Philip and the DM&E Railroad should be included in the STB Final EIS prescribing the project's mitigation requirements.

The STB needs to provide significant noise and safety mitigation along the corridor many homeowners and businesses in southern Minnesota will be harmed by this project states many of the community agreements were made under the influence of statements from the railroad such as "If you don't take this offer, the STB won't give you anything" and variations thereof. Since the STB has not taken the trouble to discuss these statements by the railroad, the STB has become a partner to intimidation.

One commentor states the mitigation plan exceeds that unconsummated partnership agreement in some aspects principally, the trackbed mitigation, the acoustic barrier walls, and addition of three grade separations. The delta cost of the mitigation that exceeds the unconsummated partnership agreement is estimated at approximately \$40.3M to \$43M. Given that the mitigation does maintain the impact on the surrounding area in a condition not worse than it was before said development, then one should be able to justify the expense in reduced loss of property value and reduced or eliminated environmental, traffic delay, accident and emergency losses.

One commentor indicated all the cities and County of Dodge, MN have agreed with the safety mitigation terms of the DM&E.

One commentor states there is no mechanism that binds the DM&E to the agreement and there is no recourse for failure of any party to achieve any of the agreed upon mitigative measures.

One commentor states United States Department of Transportation has reviewed the Draft EIS, and agrees with its basic premise that DM&E and communities affected by thus project should strive to develop mutually agreed upon responses to its adverse impacts DOT also believes, however, that DM&E should ultimately be held responsible for implementing reasonable measures to address the consequences of its proposed operations.

One commentor states that the railroad and affected comminutes should meet, realizing that the former bears the onus of undertaking all reasonable measures and expenses to reduce in significant respect the major adverse effects of its proposal, and that the latter must cooperate and contribute to the resolution of the identified problems.

Response

SEA conducted an extensive analysis of each individual resources for each alternative. Findings were illustrated throughout the Draft EIS in both tabular as well as textual format to provide simplicity, as well as detailed explanations. Potential impacts to each resource are discussed in the appropriate section of the Draft EIS for all the alternatives. As appropriate, comparisons of the EPA threshold standards and potential increase due to the impacts of the proposed project are illustrated and explained for each relevant issue in the corresponding sections of the Draft EIS. Discussions were then summarized to reduce the likelihood of redundancy in the text.

Factor: 0

Restatement 008099 29

The commentator stated that all maps in all volumes of the DEIS should be in color because use of black-and-white causes all alternatives to appear gray.

Response

SEA acknowledges the difficulty of reading some maps that are printed in black and white. However, color maps were not feasible due to the large number that had to be reproduced and the cost involved in that reproduction.

Factor: 0

Restatement 006454 31

The commentator indicated that page ES 91 of the Executive Summary noted the text that referred to, in part, "all federal, state and local permits required by the Corps of Engineers." The commentator stated that DENR also needs to be contacted concerning the need for permits that may not be required by the Corps.

Response

SEA acknowledges the comment and notes that the Applicant should also contact the South Dakota SENR for coordination with any permitting activities in the State.

Factor: 0

Restatement 007546 326

Several commentators provided comments on the environmental impacts of the proposed DM&E project. Commentors noted the Draft EIS underestimates the extent to which the project worsens the existing conditions. While there is recognition that the rail bed grade construction is a permanent impact there has been no effort in the Draft EIS to disclose the range of environmental impacts that are known to have occurred, nor is there any effort to predict or manage the expected environmental impacts of the project.

Other commentators indicated numerous new and different formulae for traffic delays, noise and vibration were used for this project that have not been used by the STB in previous actions. The clear results of these "novel formulas" is that there was no impact found when any kind of common sense would show that there will be many different impacts. The economic impacts provided by DM&E and referenced numerous times in the Draft EIS (Ex. 4.3.16.3) are for 40 MNT and 100MNT. In addition, the Draft EIS masks the relative impacts of R-2 and R-4 by simply using words such as "noise" and "traffic delays" as between R-2 and R-4 must include, inter alia, the numbers of cars, school buses, emergency vehicles, people, and businesses that will be affected by these alternatives. The Draft EIS should provide the actual and current figures for 20 MNT and 50 MNT. The Draft EIS uses different standards in different states to determine if there will be traffic "impacts". This leads to the conclusion that Wyoming will be impacted on its low volume roads but Minnesota will not be "impacted" on its urban high-density corridors. The Final EIS should reflect DM&E's maintenance windows in noise calculations. Unlike typical operating proposals, the DM&E states that it's coal train will operate "in set time slots." As DM&E puts it, "If a train is not ready to move from a staging yard when a slot is available, it will

Similar

wait for the next scheduled slot. Consistent with this approach, DM&E states that "The operating plan provides for up to 4 maintenance windows, of up to 6 hours each..." These facts are relevant to the noise issue because of the use of the day-night sound level (Ldn) to measure noise impacts. The Ldn methodology requires increasing all nighttime A-Levels (between 10 p.m. and 7 a.m.) by 10 decibels. Thus, if DM&E's maintenance windows require DM&E to increase the percentage of its nighttime operations, then the Ldn will increase. And if, the Ldn increases, the distance between DM&E's tracks and any particular dB level also will increase. And, as the distance increases, the number of sensitive receptors affected by that level of noise also would increase. On information and belief, the 65 and 70 dBA contours shown in Table F-6 assumes that DM&E's operations will be evenly spaced throughout the day. This means that 9/24ths (37.5%) of the movements are assumed to occur at night. However, as demonstrated in Wheeler, Exhibit 11, of the 24 possible maintenance time distributions, 14(58.3%) result in higher than average nighttime traffic. This means that the Draft EIS has understated the Ldn and has understated the number of sensitive receptors that would be affected by DM&E's operations.

One commentor stated while the Draft EIS contains a full and detailed discussion of the Project's negative environmental impacts, the future to consider the benefits frustrates the goals of NEPA: "[i]n order to fully appraise the potential environmental harms of a proposed project, they must be weighed against the economic benefits of that project." South Louisiana Environmental Council, Inc. v. Sand, 629 F. 2d 1005, 1011 (5th Cir. 1980). Therefore, the Draft EIS should detail the environmental benefits of the Project to allow the decision makers to properly balance the Project's positive and negative impact. The DM&E Project is a somewhat unique development project in that it does in fact generate many environmental benefits. Therefore, the Final EIS should provide an analysis incorporating the following national and regional benefits together with the economic data provided by DM&E, as well as data compiled independently by the SEA, and weigh these benefits against the potential environmental impacts of the Project.

Response

SEA recognizes the potential environmental impacts as noted in the appropriate chapters. All aspects pertaining to potential environmental impacts have been assessed and recommended mitigation efforts have been prepared (please see Chapter 12 of this Final EIS). This Final EIS also addresses the environmental impacts that were determined to require additional analysis due to comments on the Draft EIS or additional information.

The methodology used by SEA when obtaining the data is consistent with past cases, as reported in the methodology portion (Appendix D) of the Draft EIS. As explained in Section 4.3 of the Draft EIS, the 40 MNT and 100 MNT levels of operation are both included in the analysis since the increase in operations would require construction of additional facilities that would increase the value of DM&E property within each county. Because they would be subject to the market, both levels of operation are presented for comparison and are a more accurate reflection of the potential long-term tax impacts.

In addition, SEA conducted an analysis regarding A-levels by considering train events between 10 p.m. and 7 a.m., equivalent to 10 such events. SEA cannot predict maintenance simply because it would vary considerably and would likely require only minimal redistribution of trains, thus overall noise levels should not be significantly affected. Finally, terms used throughout the Draft EIS have been summarized to reduce duplication in the text discussion.

SEA discussed beneficial as well as adverse impacts that may potentially occur as a result of the proposed project. Further analysis will be conducted with regards to cumulative impacts as discussed in Chapter 10 of the Final EIS.

Factor:

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Restatement

007625

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One commentor said the Winona Harbor barge loading facility should have been looked at in the Draft EIS, since DM&E plans to transload coal to barge. Although SEA decided that the barge traffic was not reasonably foreseeable, the commentor disagreed. The commentor said DM&E's application to the Board stated its intention to ship coal to the

Mississippi River, and Appendix 2 of the application stated that 3 of the 6 core market areas could be served by transloading coal to barge. Also, the DM&E website lists the Mississippi River as one of the target markets for the project, and the barge traffic would be a connected action to the project under 40 CFR 1508.25.

Other commenters said that the determination of reasonably foreseeable actions to be included in the Draft EIS appeared to be arbitrary. In addition to the barge traffic of coal, the Draft EIS did not consider where the coal would go after Winona, MN. Also, since Rochester, MN falls into the no growth category for air emissions, DM&E's project could impact future pollution-producing projects in the area.

Response

NEPA requires analysis of actions that are reasonably foreseeable as part of the proposed project, but does not require analysis of actions that are speculative. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on other rail lines or barge facilities could not be determined because the analysis would be based on speculation of possible routes to potential customers. Additionally, based on information from DM&E concerning potential impacts to barge traffic from DM&E's anticipated rail operations, it appears that barge loading facilities currently available could not accommodate unit coal trains of the type DM&E would be operating. Thus, projections of potential coal volumes to be transported by barge are dependent on the development of facilities capable of loading barges from unit coal trains. Should a barge facility be developed, it would likely require an environmental review under NEPA. Such a review would likely require evaluation of increased barge traffic on the river.

The Draft EIS analyzed potential impacts on air quality and concluded that all air emissions from the proposed project would have a negligible effect on Rochester, MN. The air emissions from the PRB project in the Rochester area would be insignificant compared to current emissions, and would virtually have no effect on the ability of future projects in the Rochester area to increase air emissions.

Factor: 0

Restatement 007554 141

Various commenters expressed dissatisfaction with the Board's development of mitigation for the Draft EIS. While few concerns were raised about the specific conditions recommended in the Draft EIS, one commenter said that if the Board imposes mitigation that causes project delay or makes the project economically unviable, the mitigation will conflict with NEPA's goal of having alternatives be reasonably related to the project. Another commenter said that DM&E has worked hard to seek ways to mitigate the impacts of this project and the project's benefits outweigh its environmental costs. Another commenter said that the Board should assess the cumulative effects of mitigation on capital and operations in order to develop fair mitigation.

One commenter complained that Volume IV, Section 7.7 contained largely general mitigation measures and that more specific mitigation measures should be developed. The commenter cited 40 CFR 1502.9(a) and said SEA should not wait until the Final EIS to develop specific mitigation for the Rochester area and other communities.

One commenter recommended that the Final EIS outline complete mitigation plans so that the costs and impacts of each alternative can be clearly understood. Another commenter said the mitigation section in the Draft EIS did not provide enough information for commenters to submit informed comments.

One commenter said that condition 103 in the Draft EIS needs to be clarified to indicate that parties can seek clarification or augmentation of mitigation conditions after DM&E starts operations, as the Board allowed in the Conrail merger acquisition. Another commenter asked for more information on condition 104, which requires DM&E to retain a third-party contractor to assist SEA in monitoring mitigation until the proposed project's reconstruction and construction stages reach completion, and asked whether Tribes can bid on the chance to be the third-party contractor.

Response

The Draft EIS outlined preliminary mitigation measures in Chapter 7. The Final EIS contains additional mitigation developed in response to the comments and SEA’s additional analysis, including general and site specific mitigation, in Chapter 12. The Final EIS contains additional site specific mitigation. However, most of SEA’s final recommended mitigation measures apply generally to both DM&E’s proposed new line and the reconstruction and upgrade of DM&E’s existing line. That is because the potential environmental impacts on communities associated with this project appear to be largely the same. Regardless of the individual characteristics of the communities involved, each of the affected communities would experience the same construction-related impacts and number of trains.

If the proposed project gains Board approval and Condition 103 in the Draft EIS is imposed, communities could seek further relief from the Board after the Board’s final decision has been issued if there is a material change in the facts or circumstances upon which the Board relied on imposing specific environmental mitigation conditions. Furthermore, the Board’s rules specifically allow the filing of petitions to reopen Board decisions alleging changed circumstances, material error, or new evidence. See 49 CFR 1115.4.

Condition 104 of the Draft EIS would assist SEA in monitoring DM&E compliance with imposed mitigation measures, on an as-needed basis. SEA and a third-party contractor would monitor DM&E’s progress in carrying out the required environmental mitigation until DM&E has completed project-related construction and reconstruction activities as well as a period covering the first year of project-related operations, or for any period the Board imposed. The determination of the third-party contractor would only be made assuming that the Board approves the PRB Expansion Project and imposes Condition 104 or a similar condition.

Factor: 0

Restatement 007554 143

One commenter stated that the Draft EIS did not provide mitigation for specific communities because the impacts will be largely the same for all of the communities.

Response

SEA agrees that some mitigation measures will apply to conditions over the entire route of the proposed project. However, Chapter 12 of this Final EIS identifies proposed mitigation measures that are community and location specific for such areas as Rochester, MN, Pierre, SD, and Mankato, MN.

Factor: 0

Restatement 000161 25

Several commenters supported DM&E's plans to upgrade existing tracks. Other commenters stated that reconstruction activities would have adverse effects. Commenters cited delays at grade crossings and negative impacts on the environment as reasons not to upgrade the track. Commenters from Olmsted County and Rochester called for robust mitigation before DM&E is permitted to upgrade the tracks and indicated that the mitigation should include the construction of underpasses and overpasses and sound barriers.

Response

In the Draft and Final EIS, SEA acknowledges the potential environmental impacts of the proposed project. In its final decision, the Board will consider all of the information in the Draft and Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of

community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended environmental mitigation in Chapter 12, including mitigation for potential impacts in Rochester and Olmsted County.

Factor: 0

Restatement 000069 28

Many commenters supported the "No-Action" alternative because of environmental impact, loss of land, inequity to Indian Reservations, sufficiency of current transportation system, lack of notification and inadequacy of the Draft EIS. Commenters indicated that the analysis of the No-Action Alternative in the Draft EIS is biased and too heavily based on information provided by a single source in favor the project. One commenter pointed out that if DM&E has applied to the FRA for maintenance money then the portions of the Draft EIS that deal with the possibility of DM&E going out of business, if the No-Action Alternative is chosen, need to be revised. One commenter supported the No-Action Alternative but suggested modification to allow DM&E access to the Powder River Basin and reconsider the Wyoming portion of the proposal.

One commenter stated the Draft EIS did not adequately consider the "No Action" Alternative and the adverse environmental impacts the alternative would have on DM&E and its customers. Another commenter acknowledged the Board for a commendable job describing the "No Action" Alternative.

Response

The Draft EIS included a complete and objective evaluation of the potential environmental impacts of the No-Action Alternative. SEA considers, reviews, and verifies information provided by DM&E in its consideration of environmental impacts. As part of SEA's preliminary conclusions in the Draft EIS, SEA described that the No-Action Alternative would not meet the applicant's stated project purposes.

The Board considered the transportation impacts of the proposed project and the No-Action Alternative in its December 1998 decision approving the transportation merits of the project, pending completion of the environmental review. In its decision, the Board reached several conclusions about the viability of DM&E if the proposed project were not approved (See Appendix A in the Draft EIS.)

Factor: 0

Restatement 007663 28

One commenter explained that the language of the Lakota people is conceptual whereas the English language is concrete. The commenter stated that there must be a differentiation within the Draft EIS to provide meaning to the Lakota. The commenter (speaking in Lakota) also maintained that human progress is only natural and the commenter hoped that closure on the railroad project could be reached peacefully.

Response

To enhance the understanding and communication on important issues for the Native American tribes, SEA conducted extensive consultation with Native American tribes during scoping and preparation of the Draft EIS as well as during and after the public comment period on the Draft EIS. The consultation was fully compliant with 40 CFR 1502.25 and included numerous meetings with tribal interests. The outreach activities to Native American tribes are discussed more fully in Chapter 11 of this Final EIS and in the Environmental Justice Appendix of the Draft EIS (Appendix D).

Factor: 0

Restatement 007546 306

Commenters asked for more specific information on Federal preemption of state and local environmental regulations. One commenter pointed out that local land use plans may conflict with Federal plans, and according to NEPA, the EIS should state how the Board will coordinate Federal and local land use plans.

Response

State and local railroad regulation has long been preempted to a significant extent. In the ICC Termination Act, Congress broadened the express preemption provision at 49 U.S.C. 10501(b), so that both “the jurisdiction of the Board over transportation by rail carriers” and “the remedies provided under [49 U.S.C. 10101-11908] are exclusive and preempt the remedies provided under Federal or State law.” Enactment of this broad preemption regime is intended to facilitate and expedite the railroads’ ability to proceed with freight rail infrastructure projects (whether they need the Board’s approval or not) and perform their railroad operations efficiently. For example, under court and Board precedent interpreting the statutory preemption provision, it is clear that state and local regulation cannot be used to veto or unreasonably interfere with railroad operations. See Joint Petition for Declaratory Order - Boston and Maine Corporation and Town of Ayer, MA (Served May 1, 2001). In addressing the scope of section 10501(b), the courts have found that state and local permitting or preclearance requirements (including environmental requirements) are preempted because, by their nature, they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations. The courts also have concluded that zoning ordinances and local land use permit requirements are preempted. *Id.* However, not all state and local regulation is preempted. State and local regulation that does not interfere with interstate rail operations, such as building and electrical codes, is permissible. *Id.*

In cases that require regulatory approval from the Board and environmental review under NEPA, the Board encourages state, local and Federal agencies to provide input during the environmental review process. In particular, agencies can ask that the Board impose environmental conditions requiring the railroad to comply with state or local permitting requirements, which the Board does where appropriate. See generally *City of Auburn*, 154 F.3d 1025 (9th Cir. 1998).

Factor: 0

Restatement 007566 5

The commentor stated that the DEIS did not discuss the psychological effects of noise on people.

Response

SEA considered noise impacts of the proposed project based on standard noise criteria. The psychological (i.e., negative) effects of noise would in theory be reflected by the criteria that recognizes that noise levels can occur in a range of acceptable to unacceptable. SEA believes a psychological study on this topic would be subjective in nature.

Factor: 0

Restatement 007546 80

One commentor states the time scale of environmental impacts is not adequately disclosed. Some construction impacts are immediate and short lived; operational impacts may be short lived; operational impacts may be short term to long but will end when the rail service stops but construction of a new rail bed grade will have a permanent impact. Each environmental impact of the proposed upgrade will have a time scale that should be disclosed, discussed and understood in terms of environmental risk. Environmental planners and managers typically work to define risks as acute and immediate or chronic and long term in order to minimize risk or to manage the consequences. This perspective is missing in the Draft EIS. If a construction accident or hazmat spill occurs the impact is immediate and requires an immediate response, but if the construction or a spill results in water pollution a different level of community response is required to deal with the long-range or permanent impacts. In order to evaluate the environmental impacts the Draft EIS should more clearly define the time scale for the expected environmental impact.

Response

Throughout the Draft EIS, SEA addressed and analyzed both the short-term and long-term impacts of the proposed project. Potential short-term impacts are evaluated as construction impacts while potential long-term impacts are analyzed as operational impacts. Additional analysis in this Final EIS specifies the nature and context of the impact.

Factor: 0

Restatement 008609 9

The commentor indicated that the City of Austin may become a party in support of the DM&E project depending on the identification of the impacts of increased rail freight traffic and measures, funded by the owner, that could mitigate such adverse impacts.

Response

SEA recognizes the concern expressed for the project to potentially impact train traffic on the I&M link. Chapter 8 of this Final EIS states that no SEA could make no reasonably foreseeable estimate of rail traffic operating over the I&M rail line through Owatonna that would interchange with DM&E. As a result, SEA did not evaluate the potential impacts of additional trains interchanging with and operating on rail line owned and operated by I&M. The reader is directed to Chapter 8 for a detailed description of the assumptions associated with alternatives analysis through the Owatonna area.

Factor: 0

Restatement 007554 136

One commentor indicated that the increase in the number of trains operating on the existing system and the impact caused by construction and operation of the lengthy new rail line through generally pristine rural areas would have significant environmental consequences, such as noise, would be hard to mitigate.

Response

SEA has evaluated the impacts of both new construction and rehabilitation of the existing line. SEA is not recommending the construction of the bypass routes thus avoiding impacts to rural areas characterized by farm and forested land. The increase in rail traffic will impact the noise environment. The Final EIS addresses noise impacts for each of the major communities along the rail line. Chapter 12 identifies proposed mitigation related to noise impacts.

Factor: 0

Restatement 007554 138

The commentor states no mitigation is defined to reduce or eliminate the potentially significant effects that are identified for reconstruction through Rochester, as required by the CEQ regulations. The bypass is referred to in the document as mitigation, but it is not. The bypass is an alternative.

Response

SEA agrees that the Rochester Bypass was presented as an alternative route for the DM&E. The route through Rochester will have impacts that are documented in the Draft EIS and in Chapter 9 of this Final EIS. Chapter 12 of this Final EIS identifies SEA's proposed mitigation measures for the route through Rochester.

Factor: 0

Restatement 007554 139

One commenter stated that the construction impacts of the Rochester, MN reconstruction versus the Rochester Bypass need more evaluation to satisfy the CEQ regulations at 40 CFR 1502.1. The commenter stated that the environmental impacts of the proposal and the alternatives must be depicted in comparative form to show the “clear basis” for choice. Another commenter said that more alternatives should have been looked at for the Rochester area because the Bypass was the only alternative examined and there may be other “reasonable and feasible” alternatives. Another commenter pointed out that the Draft EIS treats the Rochester Bypass as mitigation, when it really should be viewed as an alternative.

A commenter said that the Board should have provided more localized mitigation for the Rochester reconstruction than it did in the Draft EIS, and that asking the public for input as to additional mitigation options was inadequate.

Citizens Against Rochester Bypass stated that the comment period should not have been extended, because the City of Rochester has been well-informed and involved throughout the environmental review process. The Citizens Against Rochester Bypass argued that the Bypass does not further NEPA’s goals of protecting the environment.

Response

As NEPA and the Council on Environmental Quality regulations implementing NEPA require, the Draft EIS examined several alternatives for each of the project components, including Rochester. SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was needed to determine the environmentally preferable alternative for certain other project components, such as Rochester. In the CEQ guidance Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations (Forty Questions), the answer to Question 6(a) states “that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS.”

The consideration of Rochester alternatives has been appropriate. The Draft EIS set forth four alternatives for the Rochester area in Section 3.3.2 (the No Action Alternative, Reconstruction of existing rail line, Approval of bypass for coal traffic, and Approval of bypass for all rail traffic) and examined the environmental consequences of each alternative. The Final EIS responds to the comments raised regarding Rochester and discusses and analyzes the alternatives for the Rochester area in Chapter 9. The Draft EIS contains some localized mitigation for Rochester and additional mitigation for that community is recommended in the Final EIS in Chapter 12. Finally, the analysis of Rochester would be the same whether it is treated as mitigation or an alternative, since adoption of the Rochester Bypass would be one way to mitigate the environmental impacts of DM&E’s proposal to haul unit coal trains.

Restatement 008660 1

The commentator states DM&E should upgrade its track through Olmsted County, Minnesota and through Rochester, Minnesota, but only if robust mitigation as described later in this document is ordered. Rational for the mitigation: Normal development in any area must maintain the impacts on surrounding are in a condition not worse than it was before said development.

Response

SEA has recommended that the proposed project follow the existing line through Rochester and Olmsted County. Specific mitigation measures are presented in Chapter 12 of this Final EIS.

Factor:

Factor:

Restatement 007541 10

The commentor stated that SEA must consider specific alternatives and the imposition of environmental mitigation in the context of advancing the overall goals of the DM&E project.

Response

SEA agrees that proposed mitigation measures must not work contrary to the purpose and need of the proposed project. SEA also notes that mitigation must also provide relief from potential impacts and provide the population in the project area with traveling safety and the protection of natural resources.

Factor:

0

Restatement 007660 25

One commenter asked to find out the Indian Trust Responsibility policy of the Board and said that a discussion of the policy should be included in the section of the EIS that describes the Board's responsibilities.

Response

The Board is concerned about the interests and concerns of all persons interested in and potentially affected by the PRB Expansion Project, including Indian Tribes. Because the Board is an independent regulatory agency, and thus is not decisionally part of the executive branch of the Federal government, the Board is not legally bound by Executive Orders including Executive Order 13,084, Consultation and Coordination with Indian Tribal Governments issued May 14, 1998. Nevertheless, the Board makes every effort to comply with Executive Orders. Specifically, the Board is familiar with the Executive Order applicable to consultation and coordination with Indian Tribal Governments and incorporates the intent of this order into the environmental review process. Thus, although the Board is not required to and has not prepared a formal Indian policy, the Board does make every effort to comply with the intent of applicable Executive Orders for projects subject to its authority.

As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public, Indian Tribes, and state, local and Federal agencies in the PRB Expansion Project. Also, SEA scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. About 8,500 comments were received during the comment period, including comments from Indian Tribes. The Final EIS addresses the issues raised in the comments.

In particular, SEA has consulted with a number of Indian Tribes. A representative of SEA conducted a meeting over several days on the Rosebud Sioux Reservation from November 27th through December 2nd, 2000, specifically to gather oral comments, in addition to written comments, from Tribal members on the Draft EIS. Also, the Programmatic Agreement (PA) and Memorandum of Agreement (MOA) set forth a process of identification and treatment of cultural resources and sacred sites. The purpose of the Programmatic Agreement is to ensure the proper and respectful identification and handling of archeological sites. The MOA is designed to address Tribal concerns for other, non-archaeological resources, such as sacred plants, water quality, and big game migration routes. SEA's recommended environmental mitigation would require compliance with both the PA and MOA.

11/15/2001

Similar
0

Factor:

Restatement 007686 3

The commentor states several members of our committee have reviewed at least portions of the Draft EIS. The commentor found omissions and inaccuracies that have the net effect of dramatically understating the environmental impacts to Rochester and Olmsted County. There is a problem with the way noise, air pollution, and automobile traffic impacts are described. Significant improvements of the Draft EIS will be necessary for the true magnitude of impacts of this project to be clearly presented in the Final EIS.

Response

SEA directs the reader to Chapter 9 of this Final EIS. SEA has included additional narrative to address specific concerns of Olmsted County and the City of Rochester, including karst topography and emergency response vehicles.

Factor: 0

Restatement 007700 3

Several commentors stated that SEA already decided that Alternative C is the preferred alternative and refuting information pointing to other alternatives is downplayed as unimportant. The conclusions in many cases do not follow the information presented. NEPA states that "EIS shall serve as a means of assessing the environmental impact of the proposed agency actions, rather than justifying decisions already made." The Draft EIS is one long litany of justifying Alternative C.

Response

SEA believes that it has conducted a fair and impartial analysis of the potential impacts of the proposed project. The involvement of other resource agencies, as either cooperating agencies, review agencies, or both has helped to keep the impact analysis focused on resources of special regional and state concern. SEA's recommendations in this Final EIS reflect the thoroughness of the evaluation and the input not only of concerned agencies but also citizens within the project area.

Factor: 0

Restatement 007701 17

The commentor states the STB must, if it is sincere in performing an environmental assessment in even the most rudimentary sense, condition this railroad expansion project on the following bare minimum protections to the human environment. First, the STB must give notice of the DM&E's proposal to, and provide an opportunity to be heard by, all people and communities along the IMRL. Second, there must be a grade separation between the DM&E and IMRL lines where these lines meet within the City of Owatonna. Third, the STB must mandate a compensation procedure and formula by which every property owner immediately affected by this project will be compensated for all harm caused by this project. These three demands are not intended to be exhaustive of our demands.

Response

A detailed description of the proposed connecting track between DM&E and the I&M Link at Owatonna is found in Chapter 8 of this Final EIS. Additionally, a description of the proposed mitigation measures is found in Chapter 12 of this Final EIS.

Factor:

Restatement 007693 4

The commentator stated that the Draft EIS inadequately addresses the effects of daily operation of 34 coal trains on surrounding areas and also makes the assumption that a large influx of unknown businesses and workers will buy property and homes adjacent to the tracks.

Response

The Final EIS takes a focus look at each large community in the project area. SEA acknowledges that noise impacts will result from increased train traffic. Property values may also be affected. SEA believes, and states in the Final EIS, that property values will not be subject to long-term impacts.

Factor:

Restatement 008099 1

Several commenters requested preparation of a supplemental EIS or a second or revised Draft EIS. Some commenters said the Draft EIS was incomplete and incorrect, and suggested withdrawing the Draft EIS and re-issuing a new, complete one at DM&E' cost. One commenter cited 40 CFR 1502.9(c)(1), which states that a supplemental EIS is needed when new circumstances or information about the project come to light, saying that this is the case here. A commenter disagreed with the preliminary conclusions on alternatives in the Draft EIS, claiming that with more study and preparation of a new Draft EIS, the Board will discover that the no-build option is the best. One commenter pointed out that a second Draft EIS would enable the Board to document unreferenced materials and complete studies, including the project design information in Volume VIII-B, appendix L, 4-1. Another commenter said a supplemental EIS should be prepared to provide additional information analyzing grade crossing delays for public comment.

One commenter suggested applying a tiered method for a Draft supplemental EIS, in which SEA would provide supplemental information for comment in specific areas needing supplementation. The commenter cited 40 CFR 1508.28 in support of this approach. Another commenter said the Final EIS should have a comment period.

Response

According to the Council on Environmental Quality's (CEQ) guidelines for implementing NEPA at 40 CFR 1502.9(c)(1), agencies are required to prepare a supplemental EIS if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

Since the issuance of the Draft EIS, DM&E has not made substantial changes to its proposed project nor have significant new circumstances or information come to light. In fact, SEA's analyses and many of the conclusions and recommendations in the Final EIS remain essentially the same as those in the Draft EIS. Although EPA previously recommended that a supplemental EIS be prepared in this case, EPA has recently indicated that a supplemental EIS is not required. See EPA letter, Final EIS, Appendix C. In the CEQ guidance Forty Most Asked Questions Concerning CEQ's NEPA Regulations (Forty Questions), the answer to Question 6(a) states "that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS." Also, according to answer 4(b) in Forty Questions, if the agency has not determined a preferred alternative or alternatives before issuance of the Draft EIS, it does not need to designate the preferred alternative or alternatives until the Final EIS. SEA's approach is consistent with Forty Questions.

This case is not like other cases where a supplemental EIS has been prepared. For example, in Somerset R. Corp. - Constr. - Niagra County, NY., 366 I.C.C. 144 (1982), cited by one commenter, the Draft EIS and Final EIS was prepared analyzing the environmental impacts of a construction proposal that was then denied by the ICC.

Similar

The applicant subsequently filed another application seeking authority to construct the rail line over another route. A supplemental EIS was prepared to analyze the environmental impacts over this new route. Therefore, the Somerset case is nothing like DM&E, since the preparation of the supplemental EIS in Somerset was triggered by an entirely new construction application.

Factor: 0

Restatement 008074 7

The commentor specifically referred to page 2-11, 2.2.1.1 line 5 and recommended the deletion of the word "lands" from the sentence because the Bureau of Reclamation does not own lands within the district, rather it owns facilities.

Response

SEA acknowledges this comment and the fact that the Bureau of Reclamation does not own lands within their district.

Factor: 0

Restatement 007757 9

The commentor indicates the STB will see the proposed mitigation measures as something of a stop gap program for a community where increasing passenger and freight rail traffic cries out for a more comprehensive solution, possibly involving other rights of way. Ultimately, the work has to concentrate on the tracks themselves, not on the areas that surround them. The high-speed corridor through Winona should in time be sealed just as the Northeast Corridor is sealed for long segments.

Response

The proposed mitigation measures presented in Chapter 12 of this Final EIS are in response to construction and operational impacts that are foreseen for the project. Speculative projects, such as high-speed rail service, are not a part of the proposed mitigation. SEA recognizes the need for comprehensive mitigation, but believes that the proposed mitigation adequately and specifically responds to potential impacts and ongoing safety concerns related to the proposed project and DM&E operations.

Factor: 0

Restatement 007753 1

The commentor states SEA determined it appropriate to consider the potential impact along the Canadian Pacific line in Winona, however noise level appears to be the only concern affecting Winona that is substantively analyzed with the draft EIS.

Response

SEA considered all impacts of the proposed project through the terminus of the DM&E line. This included safety, transportation and noise impacts.

Factor: 0

Restatement 007556 6

One commenter stated that cases, such as Idaho Pub. Util. v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994), have viewed the Board's practice of imposing consultation conditions as insufficient mitigation, so the consultation conditions in the Draft EIS cannot be considered as adequate mitigation.

Response

SEA's recommended mitigation for the proposed project is far-reaching and goes well beyond consultation conditions. In *Idaho Pub. Util. v. I.C.C.*, 35 F.3d 585 (D.C. Cir. 1994), the court faulted the Board's predecessor agency, the ICC, for simply imposing environmental conditions that required subsequent consultation and permitting by other agencies in lieu of the ICC undertaking its own analysis. In this case, however, SEA has taken the requisite hard look at the environmental consequences of DM&E's proposed project, has issued an extensive and comprehensive EIS, and has developed extensive mitigation measures in response to the data collected. Unlike Idaho, the consultation conditions recommended here were imposed after SEA had itself taken the requisite hard look at potential environmental impacts. There has been no improper delegation to other agencies in this case.

Factor:

0

Restatement

008716

26

Commenters questioned the inconsistency of the proposed project with the Forest Plan Management Area Prescriptions (Forest Plans). One commenter questioned how the U.S. Forest Service (USFS) could amend the Forest Plans to allow Alternative C and asked if the public could appeal any amendment. Commenters said that amendments to the Forest Plans seemed unnecessary, since USFS has already chosen the No-Action Alternative.

Another commenter argued that USFS's proposed mitigation overly supports DM&E's efforts at mitigation, and said that the Forest Plans should not be amended to allow DM&E's project to proceed.

Response

DM&E submitted a Special Use Application to USFS for an easement to construct the proposed project across portions of the Thunder Basin National Grassland in Wyoming and the Buffalo Gap National Grassland in South Dakota. The National Forest Management Act (36 CFR Part 219.10(e)) requires consistency between projects being proposed and National Forest Land and Resource Management Plans (Forest Plans). Two existing Forest Plans (Nebraska and Medicine Bow Forest Plans) were evaluated for consistency with the standards and guidelines of those Forest Plans as well as the Draft National Grasslands Plan Revision. Based on the USFS identification of its Preferred Alternative for this project, Alternative C, it has been determined that if Alternative C, as well as other alternatives considered, are selected, then Alternative C will not be consistent with any of the Forest Plans above and plan amendments must be proposed. The National Grasslands Plan Revision is not yet completed but it is anticipated that a plan amendment to this plan may be necessary if the Board approves the proposed project. USFS has proposed amendments to the Nebraska and Medicine Bow Forest Plans that are consistent with the original intent of the Forest Plans. Appendix L of the Draft EIS included the proposed amendments for public review and comment. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days.

If the proposed project gains approval from the Board, USFS will issue a Record of Decision (ROD) setting forth its approval or denial of DM&E's Special Use Application. The ROD would incorporate any amendments to the Forest Plans. After issuance of the decision, the public would have 45 days to review and appeal the decision.

If the Board determines the proposed project serves the interests and needs of the national public, USFS believes that Alternative C is the preferred alternative for the project. The Final EIS includes USFS's mitigation plan, which incorporates specific and detailed mitigation for Alternative C.

Factor:

Restatement 007680 1

The commentor states the NCD finds that the summary alone has many concerns for the natural resources, wildlife and protection of the public and private lands as well as stabilization of the Agriculture community and its quality of life. These concerns make the DM&E a critical concern for the District. The plan addresses the impacts, as they would affect the resources over the long term. They address the construction phase of the project but fail to look at the issues over time. The NEPA laws seem to be disregarded in several cases. Conservation Districts are required to have Long Range Plans and Annual Work Plans. The Niobara County Commissioners and the local Planning and Zoning Board also have in place, documents to protect the community. In some cases this plan is in direct conflict with local governmental plans. The Draft EIS must discuss any inconsistency of a proposed plan with any approved state and local plan or law. Where inconsistency exists, the EIS should describe the extent to which the agency would reconcile its proposed action to the plan or law.

Response

As noted in Section 12.8.1.8, Recommended General Mitigation Measures for Biological Resources, the Wyoming Game and Fish Department is a consulting agency on several of these conditions, including the same item listed as #74 in the Draft EIS. Specifically, SEA is recommending the DM&E develop and implement, in consultation with the U.S. Fish and Wildlife Service, South Dakota Department of Game, Fish and Parks, Wyoming Game and Fish Department, and Minnesota Department of Natural Resources, a habitat restoration plan designed to compensate for the loss of trees, shrubs, and other woody vegetation, prairies, and other important wildlife habitats as a result of project-related construction and reconstruction activities.

SEA acknowledges the comment about mitigation to alleviate impacts on access to public lands. Section 12.8.1.5 of the Final EIS states that DM&E shall consult with Federal land managers to determine locations where project-related construction and reconstruction activities will result in lost or reduced access to public lands due to temporary road closures or other construction related activities. SEA has recommended that the DM&E develop a plan to provide alternative access to these lands during project-related construction and reconstruction activities and operation of unit coal trains to the extent practicable.

Factor:

Restatement 007693 1

One commenter complained that the Draft EIS contained numerous errors, incorrect statements and assumptions. The commenter said that the Board made too many assumptions in the Draft EIS and should have explained the issues and used verifiable data to support conclusions. The commenter said the Board should prepare another Draft EIS to address the inaccuracies.

Response

The Draft EIS included SEA's extensive analysis of the environmental impacts of the proposed project and referenced published material as sources of information. The Final EIS describes SEA's additional analysis of project impacts and has updated information that was determined to be inaccurate.

According to the Council on Environmental Quality's (CEQ) guidelines for implementing NEPA at 40 CFR 1502.9(c)(1), agencies are required to prepare a supplemental EIS if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

Since the issuance of the Draft EIS, DM&E has not made substantial changes to its proposed project nor have significant new circumstances or information come to light. In fact, SEA's analyses and many of the conclusions and recommendations in the Final EIS remain essentially the same as those in the Draft EIS. Although EPA previously recommended that a supplemental EIS be prepared in this case, EPA has recently indicated that a supplemental EIS is not required. See EPA letter in this Final EIS, Appendix C.

Factor: 0

Restatement 007708 2

The commenter stated that Steele County preserved its position to set forth its request for mitigation to be imposed as a condition of approval of this project.

Response

SEA directs the reader to Chapter 12 of this Final EIS and a description of SEA's proposed mitigation measures. SEA also encourages communities to work directly with the Applicant to arrive at agreed-upon mitigation for their community and resources of interest.

Factor: 0

Restatement 007566 9

The commenter believes there is confusion about the number of trains per day. The neighborhood groups represented know that to be three, which you agree with in the following:

Vol. II, P.3.1-87 the DM&E operates three trains per day.

Vol. II, P.3.3-62 & 63, the number of trains per day is listed as 3.

Vol. II 3.3-44 all existing traffic (three trains a day).

Response

SEA directs the reader to Chapter 9 of this Final EIS for a discussion of the accurate train count. For modeling purposes the number has been revised to 3 in order to show worst-case conditions for future train traffic.

Factor: 0

Restatement 007625 95

The commentor stated the selection between extension alternatives B, C and D and the resulting siding locations would make significant differences in natural resource impacts in Minnesota. Alternative B includes sidings adjacent to five states Wildlife Management Areas, Alternative D has sidings adjacent to four WMA's, and Alternative C would have no sidings adjacent to WMAs. Sidings pose additional threats to wildlife movement as two tracks must be crossed, require twice as much application of herbicide, and potentially impact more habitats. In addition because the Draft EIS fails to consider state-listed species, significant differences in impacts of the various siding and yard locations are not recognized.

Response

SEA recognizes that Alternative D sidings would have had potential impacts to the Wildlife Management Areas. For this and other reasons, Alternative D has been dropped from further consideration. A description of the construction and operations related to sidings are presented in the Draft EIS, Chapters 1 and 2, with locations provided in Tables 2-6 and 2-7. Appendix I of this Final EIS contains a list and maps of the proposed siding locations.

11/15/2001

Similar
0

Factor:

Restatement 007546 96

The commentor indicated that the Draft EIS is unclear as to who oversees grading permits, erosion control, wetlands, and environmentally sensitive land, before and after construction starts. The commentor asks if this will be a local, state or federal permit.

Response

Permitting activities are the purview of a variety of federal, state, and local agencies. Chapter 12 of this Final EIS specifies the coordination activities that are required of the Applicant for construction activities. Activities in wetlands require federal permits. Grading and construction activities most often come under state and local control.

Factor: 0

Restatement 007747 3

The commentor stated concerns for the crossing upgrades along the route, and expenses for their construction. The dwelling and businesses located along the tracks were placed there long after the tracks were laid, and should not expect remuneration for additional traffic. One business located in Goodview abuts the CP Main line and with the welded rail systems passing rail traffic is hardly noticed.

Response

Chapter 12 of this Final EIS provides the proposed grade separations for this project. Cost of these improvements may be shared through negotiated agreement or paid by the Applicant.

Factor: 0

Restatement 007624 43

The commentor stated that too many pages in the 404 Permit Application were marked "intentionally left blank" and that the cost and size of the document could have been reduced if two-sided printing had been used.

Response

SEA makes every effort to print two-sided documents unless information or formatting requirements dictate otherwise.

Factor: 0

Restatement 007554 179

Some commenters complained that the Draft EIS left out several impacted communities from both analysis and participation in the process. For example, the commenters said the Draft EIS does not address the increase of rail traffic in Austin, MN or other communities along the I&M Rail Link Railroad (IMRL). One commenter requested that the Board prohibit the DM&E link with the IMRL until the environmental impacts on the City of Medford, MN have been evaluated and mitigated. Another commenter said the Draft EIS needed to discuss the DM&E and IMRL connection in more depth. The commenter said the Board did not notify or invite comments from communities located along the IMRL, although the project would impact them. The commenter said that in the Owatonna, MN Agreement, the city agreed to support the project if DM&E would pay for four-quadrant gates at intersections, two of which are IMRL intersections.

Similar

One commenter said the Draft EIS should be expanded to include the cities of Goodview and Winona, MN at the east end of the DM&E line, which would feel the same effects as cities in the west. Another commenter said that the Draft EIS does not discuss specific impacts on the city of Winona or Winona State University, which violates 49 CFR 1105.7, requiring the Board to describe effects on public services.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

Although the existing DM&E rail line does not extend into the cities of Winona or Goodview, MN, Chapter 3 of the Draft EIS included analysis of the impacts of the proposed project on those communities.

Factor: 0

Restatement 007554 219

One commenter requested that DM&E be required to submit a Safety Integration Plan (SIP) for the proposed project. The commenter said that because DM&E has a poor safety record it should be required to work with Federal Railroad Administration (FRA) to prepare the SIP, and the Board should make preparation of the SIP and compliance with it a condition of approval. The commenter questions Board policy of requiring SIPs in mergers, but not construction cases.

Response

SIPs are documents that describe the steps applicants will take to ensure the safety measures of a transaction involving the proposed integration of rail operations of multiple carriers. Neither FRA nor the Board require the preparation of a SIP in rail construction cases involving only one applicant. Even though no SIP is prepared, safety is not ignored, because railroads must comply with FRA and all other applicable safety requirements in the construction and operation of rail lines.

Factor: 0

Restatement 000161 29

Many commenters were concerned about ensuring due process and equal voice for the general public. Many stated that they have little influence on the process or decisions because DM&E controls the power and money and acts in their own best interest. Others stated they have been disenfranchised because of their unwillingness to cooperate with the DM&E Railroad. Citizens expressed concern that SEA has not provided factual information to the general public and has done little to rectify the under-representation of the rural citizens and neighboring towns. Others were concerned that City governments are misguiding the general public either in favor or opposition to the railroad upgrade. Citizens indicated that they are ineffective because their City governments seem to be reaching decisions without public input.

Several commenters stated that the public comment procedures limit public participation. For example, having to supply 10 copies and an original of any comment letter over 5 pages is an unnecessary expectation to limit public participation. Commenters cited the denial of access to sources in the Draft EIS as another limitation on the public' ability to participate in the process.

Response

SEA and the cooperating agencies implemented an extensive outreach plan with the specific intent of providing equal opportunity for the affected public to voice concerns. SEA and the cooperating agencies reviewed the written and oral comments on the Draft EIS. The Final EIS provides clarifying information and responses to the substantive comments on the Draft EIS. The Board and the cooperating agencies will base the final decision on an objective assessment of the complete available information. The Board will consider the Draft EIS, the Final EIS, public comments and responses to public comments in its final decision regarding the proposed project. Commenters submitting comment letters of 5 pages or more were asked to supply 10 copies of the comment letter to ensure that the letter was distributed through the agency for prompt review and response. SEA included substantial referencing to sources used for the Draft EIS, however some reference materials were not included in the Draft EIS to limit the size of the lengthy document. Restricting the size of the document is consistent with NEPA regulations.

Factor: 0

Restatement 007541 11

The commentator stated the Final EIS should ensure that any mitigation imposed is both economically and operationally feasible in furthering the DM&E's proposed PRB coal operations and its continued viability as an important rail carrier serving upper Midwest.

Response

SEA believes that the proposed mitigation measures are both economically and operationally feasible within the context of the proposed project.

Factor: 0

Restatement 007566 12

Several commenters remarked that the Outreach Plan assumed that low-income minorities, many with minimal English skills, would participate in the review process. Although minority groups were notified of the Draft EIS, it is unknown if the groups were in contact with local residents. Commenters stated that SEA must be mindful of the challenge for lower income families, because of struggles to meet basic needs, to comment on a 5,000-page document. Commenters suggested that SEA establish mitigation standards for those neighborhoods designated as affected by Environmental Justice issues.

Response

In addition to an extensive outreach plan, SEA took additional steps to notify and involve affected minorities and low-income community members. Those activities included meetings and consultations, many site visits, use of the Board's official web site, and a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process, to facilitate and encourage public understanding and participation. SEA contacted groups representing and working with low-income and minority community members with the goal that these groups would assist these individuals with participation in the process. Further response regarding Environmental Justice issues is provided in Chapters 3 and 4 of the Final EIS.

Factor: 0

Restatement 008057 13

The commentator stated that the level of costs experienced by Reno need to be considered in the Draft EIS. The commentator also indicated concern about negative impacts on air quality.

Response

Cost information for each alternative is provided in each chapter of this Final EIS that describes impacts to communities. In addition, air quality for each community is discussed. Cumulative air quality impacts are described in Chapter 10 of this Final EIS.

Factor: 0

Restatement 007554 146

Several commentors stated CEQ guidance for NEPA compliance states that NEPA requires that "reasonable alternative mitigation measures and monitoring programs" should be addressed in the draft and final environmental impact statement. The CWA section generally require information on the type of mitigation, mitigation plans, monitoring plans, standards for measuring mitigation success, or a contingency plan case of mitigation failure, information that is lacking in the Draft EIS in order to make the required Guidelines determination that appropriate and practicable steps have been taken which will minimize potential impacts. Furthermore there are no mitigation plans identified in any of the project documents for significant impacts to two National Park Class I airsheds, for the cut and fill operations or for the anticipated impacts to cultural resources. Mitigation must be addressed on a case by case basis, as different types of mitigation are appropriate for the same category of impact in different geographical locations, in direct response to the different conditions that exist in each of the different geographical locations. The Draft EIS fails to adequately address serious impacts of the proposed construction project on human health and welfare issues of specific concern to Mayo and does not identify or develop means to mitigate adverse environmental impacts. The Draft EIS does not meet NEPA requirements.

One commentator states on page 7-2, it is specifically stated that not much was done with mitigation for specific communities including Rochester, MN. The reasons provided were that impacts will be largely the same for all of the communities; that each will experience the same construction-related impacts and that noise impacts are not community specific, etc. This is contrary to the purpose of the NEPA and CEQ requirements.

Response

Chapter 10 of this Final EIS provides analysis of potential impacts to Class I airsheds. No significant impacts are expected. Additionally, cut and fill impacts to cultural resources are expected to be minimal. Chapter 12 of this Final EIS provides SEA's proposed mitigation measures for the proposed project. This chapter identifies mitigation measures that would apply to the entire project area as well as proposed measures that identify specific impacts in specific communities. Specific mitigation is provided for the city of Rochester.

Factor: 0

Restatement 007554 147

The commentator states page 7-3 says, "SEA also has not designed any environmental mitigation specific to the two remaining potential bypass routes around Brookings, SD and Rochester, MN.

Response

SEA has not recommended any of the bypass alternatives in this Final EIS. No mitigation of bypass impacts are thus required.

Factor:

Restatement 000234 17

The commentor states because the Draft EIS is hard to use, conclusions aren't documented, NEPA requirements were not met, references were not available to verify claims, and public officials can not make informed decisions without reliable up to date information the public can not comment on the merits of the proposal in an informed atmosphere.

Response

SEA recognized that the size of the Draft EIS was of concern to citizens and review agencies and extended the comment period for the Draft in order to allow a full review of the document. The Final EIS documents the conclusions of the analysis and the recommendations of SEA for each of the alternatives. An index has also been provided to assist the reader in finding topics of concern or interest.

Factor: 0

Restatement 007757 2

One commenter stated that in the years ahead, DM&E originating traffic will probably constitute a much smaller percentage of the total alleged traffic in Winona. The commenter believed that no more than 17 DM&E coal trains will pass through Winona daily. Given the CP's present traffic, increases in that traffic, the current Amtrak train and the 12 additional passenger trains planned for this route as part of the Midwest Regional Rail System, DM&E cannot be singled out as a scapegoat for the impacts of rail traffic. All the parties, including the State of Minnesota and the City of Winona, should contribute to the amelioration of the problems at hand.

Response

SEA had identified in this EIS the anticipated impacts related to the proposed project as well as cumulative impacts from reasonably foreseeable projects (see Chapter 10 of this Final EIS). Chapter 12 of this Final EIS identifies SEA's proposed mitigation measures. DM&E will be asked to contribute mitigation for impacts that result from activities associated with their proposal.

Factor: 0

Restatement 007701 6

One commentor stated that the consideration the City should receive in return for "supporting the project" is DM&E payment for four quadrant intersection gates. Two of the city street intersections slated for such gates don't intersect with DM&E tracks. They intersect with the IMRL.

Response

SEA considered the need for grade separated intersections for each major intersection. SEA determined that the traffic levels did not meet the criteria for a grade-separated interchange in Owatonna. For a more detailed description and analysis, please refer to the discussion of Owatonna in Chapter 8 of this Final EIS.

Factor:

Restatement 008057 9

One commenter indicated that one of the maps associated with the proposed Rochester bypass shows five sidings in Olmsted county spaced at 12 mile intervals and assessed that there was no explanation for this closely spaced siding configuration in the Draft EIS. The commenter stated that the only useful purpose for five sidings evenly spaced in Olmsted County is if the Applicant intended to double the proposed number of sidings in order to double the number of trains that the track could accommodate in a day. This commenter asked for an explanation of the proposed siding plan and stated that the Draft EIS did not evaluate alternate siding locations, including sidings on the potential Rochester Bypass. The commenter also said that 30 mph train traffic on the sidings indicate that the sidings will not be "high speed" as the Draft EIS states.

Response

Rail sidings would be constructed within the DM&E right-of-way. Chapter 4 of the Draft EIS included an evaluation of the potential environmental impacts of construction within the DM&E right-of-way, including rail sidings. SEA also included an evaluation of the transportation and safety impacts for rail sidings in the respective evaluations in Chapter 4 of the Draft EIS. SEA includes the specific locations of the sidings in Appendix I of the Final EIS.

In response to the comment regarding sidings on the Rochester bypass, because SEA is not recommending bypasses as mitigation for the environmental impacts, no sidings will be located along the bypass.

As discussed in Chapter 1 of the Draft EIS, trains would slow to approximately 40 miles per hour when operating on rail passing sidings.

Factor:

0

Restatement 008052 5

One commenter said the Board paid too much attention to a vocal minority, since the majority of affected communities favor the project and only a few have opposed it. According to the commenter, the Draft EIS neglected to provide enough detail on the advantages of the project, such as the benefits of using low-sulfur coal. One commenter recommended that the Final EIS contain a separate section outlining the project' benefits. The commenter said, although the Draft EIS contained a discussion of the project' benefits in the "no-action alternative section," the information on the beneficial impacts of the project should be pulled out into a separate section.

Response

The Board's environmental review process is an open process that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and the broadest possible participation in the process. SEA prepared the Draft and Final EIS to identify and evaluate potential environmental impacts of the DM&E proposed rail line construction and operation to coal mines in the Powder River Basin and to inform Federal, state, and local agencies, affected communities, Native American Tribes, and the general public about the project, its potential environmental effects, and how best to mitigate some of the potential environmental impacts. The Draft EIS detailed the purpose and need for DM&E's proposed project in Chapter 1. The Final EIS contains additional discussion, addressing the purpose and need for the project in detail in a separate chapter, Chapter 2.

11/15/2001

Similar
0

Factor:

Restatement 007625 100

The commentor stated that DM&E must obtain a written permit from the MDNR Division of Forestry prior to any open burning in Minnesota. DM&E must demonstrate that there is no other reasonable alternative means of waste disposal other than open burning and must also notify local fire departments.

Response

SEA acknowledges the comment and will obtain the necessary permits for open burning.

Factor:

0

Restatement 004295 11

Onecommenter indicated that Option B along Shag Road is described at page 3.5-20 of the Draft EIS as being an area which is "rural and undeveloped." Later on that same page, the Draft EIS recites that there are "approximately 1.6 acres of residential land present within the proposed rail yard site," with two residences being located within the site, itself. On the next page, the Draft EIS recites that there are "12 residence located within 500 feet of the proposed rail yard boundary," consisting of five rural farmsteads and seven residences. Page 3.5-21, states that the proposed Option B or Shag Road site includes "no commercial property" located within the proposed rail yard boundary. The following page, page 3.5-22, refers to "one intermittent stream" passing through the proposed Middle East Yard along the Shag Road area which is noted in the Draft EIS as Option B. All of these and many other descriptions of the Shag Road area are just plain wrong.

Response

SEA received numerous comments regarding the existing conditions along Shag Road and the proposed Middle East Yard. Chapter 4 of this Final EIS provides additional descriptive narrative and analysis for the proposed siting of this rail facility. SEA has also proposed mitigation that is specific to the Shag Road area in order to maintain continued access at both ends of the road. The reader is directed to Chapter 12 of this Final EIS for this proposed mitigation measure.

Factor:

0

Restatement 000009 1

Many commenters expressed concern over the length and complexity of the Draft EIS and requested an extension of the comment period. Commenters encouraged extensions between 90 days and 180 days. Other commenters asserted that the proposed comment period should not be extended because a 90-day public comment period is more than adequate. Commenters urging adherence to the 90-day comment period cited the importance of expediting the project.

Response

In response to public comments, the Board extended the public comment period for an additional 60 days to a total of 152 days (from September 27, 2000 to March 6, 2001). This extended comment period allowed communities, organizations, and individuals to review the Draft EIS and prepare comments. The Board has determined that the public had sufficient opportunity to comment on the Draft EIS and is not reissuing the Draft EIS.

Factor:

Restatement 000003 3

Commenters supported the Rochester Bypass Alternative because fewer people would be affected and the City and the Mayo Clinic would be protected from disruption, including disruptions from noise, safety, traffic delay, and emergency response delay. One commenter stated that patients of the Mayo Clinic will cut their visits a day or night shorter because of the increased coal train traffic and this will translate into an economic impact on Rochester. Another commenter indicated that corrections to the errors and omissions in the Draft EIS would demonstrate that the bypass is the best alternative.

Other commenters opposed the Rochester bypass because the bypass would result in greater impacts to rural landowners, businesses and wildlife and native plant habitat. Commenters also opposed the bypass because of the greater economic burden on taxpayers to build a new corridor. A commenter from Olmsted County stated that the citizens of Olmsted County should not have to pay more taxes just to relieve the City of Rochester and the Mayo Clinic from the inconvenience of train traffic. Another commenter maintained that Rochester should not be exempt from railroad traffic just because of inconvenience or the special status of the City. One commenter suggested that a bypass should be built for the new trains, but the existing trains should continue to run through the City of Rochester.

Response

As described in Chapter 9 of the Final EIS, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project.

Factor:

Restatement 000008 2

Many commenters stated opposition to the DM&E Railroad project and supported the No-Action Alternative. Commenters expressed concerns about the proposed action including negative environmental impacts, noise, detriment to the quality of life, concern about the transportation of coal, and insufficient level of analysis in the Draft EIS. One commenter stated that any economic gain would be short term compared to the negative long-term impacts of the DM&E expansion on the county' natural resources. Several commenters asked for a withdrawal and reissuing of the Draft EIS to improve the analysis. Some commenters qualified their opposition, stating that they would be opposed or supportive of the project depending on the construction of certain bypasses. Commenters concerned with negative impacts from the project came from Rochester, Pierre, Mankato, Winona, Eagle Lake, Black Hills and Pine Ridge Reservation area and Native-American tribal lands.

One commenter stated that economic impacts would be the greatest in the larger communities. The commenter also suggested that the railroad expansion is unnecessary because the future of agriculture is uncertain, therefore communities should be shifting to a system of using products, not shipping them.

Response

In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative. SEA is not recommending any of the community bypass proposals for approval by the Board.

Factor:

Restatement 000013 1

Several commenters requested that local and state agencies and communities be given more time and opportunity to participate in the project. One commenter requested that local and state agencies be given more time to review the Draft EIS, while another commenter requested that a public hearing be scheduled in Owatonna, MN in addition to the meetings scheduled in Mankato and Rochester, MN, since Owatonna residents might not be able to travel to Mankato or Rochester, and Owatonna would be significantly impacted by the proposed project. One commenter stated that taxpaying citizens have the right to decide their quality of life and they should not be controlled by Government entities.

Another commenter said voters need to know the differences between the various project options in concrete financial terms. For example, the commenter questioned how the through city and Bypass options for Olmstead County, MN would affect taxes.

Response

SEA conducted extensive scoping to encourage public participation in the EIS process. The Draft EIS in Section 1.7 and the Final EIS in Chapter 1 discuss the scoping and public outreach activities that were conducted as part of the Powder River Basin Expansion Project environmental review process. SEA initially proposed a 90-day comment period for the Draft EIS, but after receiving numerous requests, extended the comment period for an additional 60 days. After the Draft EIS was issued, SEA held oral hearings at appropriate locations. Chapter 9 of the Final EIS describes the additional analysis for the Rochester area alternatives including a discussion of socioeconomic impacts.

Factor: 0

Restatement 000016 1

Many commenters gave full support to the DM&E project, urging approval of Alternative C and the disposal of the "No-Action" Alternative A. Commenters cited safety as a benefit to the project because the DM&E project will repair deteriorating lines and eliminate the need for a high volume of trucks on the highways. Commenters supported the project because they would be both customers and employees of the proposed DM&E Railroad. Commenters stated that jobs created by construction and maintenance of the railroad would invigorate the local economies and bring new tax revenue to community governments. Many commenters also supported the proposed project because it will support the farm economy by improving transportation efficiency and reducing transportation cost for farm commodities. Commenters urged the Board to move forward with the project on schedule.

One commenter gave partial support to the project but indicated that the Board should rely on objective analysis by qualified experts.

Response

As described in the Draft EIS, the applicant's preferred alternative is Alternative C. In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Factor: 0

Restatement 000023 1

Commenters raised several complaints regarding the public meetings, including inadequate meeting facilities and presentations lacking in content and detail. Concerned parties

suggested that the use of visual aids, showing the extent of the project and details of the alternatives under consideration, and maps, included in the overhead presentation, would increase the benefit of the meetings to the public. One commenter maintained that SEA staff should stay until the advertised time of 10:00 PM to ensure that attendees arriving late receive the same information.

Response

SEA held 12 public meetings in approximately 2 weeks, and in some areas held afternoon and evening meetings, with the principle goal of receiving public comments in response to the project. During preparation for the public meetings, SEA focused on determining the best locations to accommodate all interested parties. SEA considered the size of expected turnout, convenience of location, constraints due to weather conditions, and meeting space availability in their efforts to encourage public participation.

SEA designed the presentation at the beginning of the meetings to give a brief overview of the project. Content and detail in the presentations was limited because the primary focus of the meetings was to provide the public with an opportunity to comment. Several information packets were available for all participants, including detailed packets for all media sources. The public was encouraged to read the Draft EIS, which was available at all of the meetings and at over 80 libraries in the project area, for technical data and detailed maps. SEA staff remained at the meeting site as long as necessary depending on the attendance of the meeting. In the cases where a large number of community members attended the meeting, SEA staff stayed late to give each person an opportunity to make a comment. When few people showed up for the meeting, SEA staff closed the meeting after all commenters spoke.

Factor: 0

Restatement 000049 2

One commentator states the city council shouldn't have used tax money to support a private group opposing the upgrade. They should have negotiated to have the upgrade track either raised or depressed to eliminate all grade level crossings in the city, which also eliminate the need for blowing whistles by through trains.

Response

SEA encourages communities and DM&E to negotiate solutions in regards to areas of concern for the citizens. SEA, however, cannot direct their negotiations to determine the outcome of the proposed project.

Factor: 0

Restatement 000028 1

Commenters expressed dissatisfaction with the public outreach campaign, indicating that interested citizens, including affected landowners, were not given the courtesy of receiving a copy of the document. Several commenters requested specific updates to the project mailing list so the appropriate parties receive necessary information. Additionally, when parties received the Draft EIS they were not instructed in regard to what role they had in the process. Commenters from different cities complained that SEA failed to properly notify affected landowners of public meetings and important changes in the project. Other commenters stated that their communities did not have an opportunity for a public meeting.

Although, according to the document, SEA instructed DM&E to discuss mitigation alternatives with the public, several landowners stated that they had to get information from newspapers and word of mouth. The City of Skyline stated they were not notified of the Southern Route Alternative (M-2) until fall 2000 and inaccurate information about alternatives demonstrates that SEA should have consulted with the City before publishing the Draft EIS. Commenters insisted that DM&E make a good faith effort to consult with affected parties, in accordance with the law, regarding any future decisions.

Response

SEA conducted an extensive outreach program to alert the affected public about the scoping process and encourage public response to the proposed project. SEA placed advertisements in 268 media sources and contacted 6,000 individuals with fliers asking if they would like to receive a copy of the full document. The Draft EIS was available in over 80 libraries in the project area. Appendix C of the Final EIS contains copies of additional outreach materials including postcards, press releases, newsletters, or other notifications distributed since release of the Draft EIS. As stated above, SEA and the cooperating agencies reviewed and considered substantive comments on the Draft EIS, including corrections and clarifications regarding bypass routes and impacts to adjacent landowners. SEA has responded to issues regarding Mankato in Chapter 7 of the Final EIS.

Factor: 0

Restatement 000150 7

Commenters supported a route bypassing Pierre citing several reasons. Commenters stated that the economy of Pierre is dependent on state government and tourism and both would be adversely affected by additional train traffic. Another commenter stated that the division of the city by the railroad would force Pierre to expand the law enforcement budget 33%, thus reducing funds for other city services. Increased rail traffic could also cause unnecessary delays and environmental impacts for residents of Pierre. Commenters indicated concern that noise disturbances would be disruptive to private residences, hotels, businesses, and schools.

One commenter also stated that the bypass proposal offered by Pierre would shorten the distance traveled by trains in the area.

Response

In response to the public comments regarding the Pierre Bypass, SEA completed an evaluation of the Pierre Bypass Route at the same detail as the evaluation of bypass alternatives for other communities. As described in Chapter 5, SEA determined that the existing route through Pierre, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the proposed project. Chapter 12 describes SEA's recommended mitigation for the environmental impacts of the proposed project through Pierre, including noise and safety.

Factor: 0

Restatement 000161 20

Several commenters raised questions and concerns regarding the need for the Government to use the doctrine of eminent domain to take private lands for DM&E' proposed project, and asked for more information about the eminent domain process. One commenter suggested that the Government should give DM&E tracts of Federal land, and complained that the Draft EIS focused more on Government lands than private lands. Another commenter said that ranchers will resist all efforts to have their land taken for DM&E' use. Some commenters said that population growth and decreasing available space has antiquated the doctrine of eminent domain, and one commenter said that the Board does not have the authority to take private property for DM&E' use.

Response

Eminent domain proceedings are regulated by state law and not administered by the Board. In rail construction cases before the Board, the Board determines whether the construction is inconsistent with the public convenience and necessity under 49 U.S.C. 10901 but the applicant is responsible for the acquisition of land necessary for execution of the proposed project. The Board has encouraged DM&E to negotiate with affected communities and individuals if the construction is approved to develop private agreements regarding the acquisition and use of land. DM&E has worked with the Landowner Advisory Board to develop a Land Use Mitigation Policy and Plan that addresses project impacts on private lands. In the event that the proposed project is approved and DM&E cannot reach agreements with landowners, eminent domain proceedings may be pursued as an avenue of last resort.

The Draft EIS addressed land use concerns, including preliminary recommended mitigation for effects to private, residential lands, in Chapter 7, Section 7.8.3. The Draft EIS discussed project impacts to specific regions of residential lands in Chapter 3 and Chapter 4.

The Final EIS addresses land use impacts in Chapter 3. Chapter 12 of this Final EIS describes SEA's final recommended mitigation requirements.

Factor:

0

Restatement 000073 1

Many commenters opposed the Southern Route Alternative (M-2), the proposed route through the rural area outside Mankato. Other commenters opposed the M-3 route that would run through the city of Mankato.

Commenters opposed to the M-2 route stated that it would shift the burden from an urban corridor to a rural area, violate the Board' long-standing preference for the use of existing corridors, destroy the peace and tranquility in the Blue Earth River Valley, obstruct the city' further growth and development, have a disastrous impact on neighboring farms, homes, businesses, recreation areas and private communities. Commenters suggested that if DM&E must expand the track then it should use the existing rail corridor through the City of Mankato and instead of using money to purchase land for the M-2 route, purchase homes near the tracks. Several commenters also pointed out that if DM&E could not negotiate with the Railroad that currently owns the rail corridor, then they should not be permitted to expand the railroad. Several commenters criticized DM&E for failing to notify the City of Skyline of the intent to construct the M-2 route at the base of the Skyline bluff. One commenter also stated that the Draft EIS failed to discuss the environmental and economic impacts of the M-2 route on the residents of Skyline and that the revised EIS should address these impacts if M-2 remains a viable alternative.

The commenters supporting the M-2 route and opposed to the M-3 route through the City of Mankato, stated concerns about disturbance and negative impacts of coal trains. These commenters stated that the in-city route will affect more people than the M-2 route, thus it is more beneficial for a larger percentage of the population for the train to run outside the city. These commenters supported the removal of the M-3 route from consideration.

Response

As described in Chapter 7, SEA completed a thorough evaluation of the Mankato Southern Route Alternative (M-2). Based on this evaluation, SEA determined that the Southern Route Alternative is the environmentally preferred alternative if the Board approves the proposed project. The evaluation in Chapter 7 discusses additional engineering information for the route and the potential impacts to the City of Skyline. Chapter 7 also includes a detailed description of the route and the potential environmental impacts. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, but in the alternative, M-3, should that route become feasible.

Factor:

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Restatement 000133 1

Several commenters indicated they had a favorable experience dealing with the DM&E Railroad. Others expressed gratitude for the opportunity to comment on the Draft EIS.

Response

SEA appreciates the involvement of the public in the environmental review process and encourages the continued cooperation between the public and DM&E.

Factor:**Restatement**

000376

13

Commenters questioned the role and participation of the cooperating agencies in the project' environmental review process. Commenters wondered what would happen if one or more of the cooperating agencies disagreed with the Board as to the preferred alternative. One commenter pointed out that the Bureau of Reclamation supports the no-action alternative, while another commenter asked what impact cooperating agencies would have on the Board' decision if they all advocated the no-action alternative. Another commenter wondered how a SEA determination that neither alternative A nor B is environmentally preferable would affect the evaluations of the other agencies.

One commenter complained that the amount of material generated by all the agencies for the project was overwhelming for the public. For example, in addition to the Draft EIS, the U.S Army Corps of Engineers issued a lengthy document on the 404 permitting process. One commenter requested that the U.S. Army Corps of Engineers extend the comment period for its 404 permitting document, because the nearest copy of the document was in a distant library. Another commenter suggested that the U.S. Army Corps of Engineers should have prepared its own EIS, and complained about inaccuracies in the maps.

Another commenter wondered why the Board invited the Bureau of Reclamation to be a cooperating agency so late in the process. The commenter said that the Bureau of Reclamation should have been included as a cooperating agency as soon as the project began to address the Hay Canyon, SD alternatives, since Hay Canyon, Oral Segment and WG Flat cross Bureau of Reclamation lands.

Response

Under the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, when one or more agencies has jurisdiction over an action that requires the preparation of an EIS, one agency shall be the lead agency and the other agencies shall be cooperating agencies that assist the lead agency in the preparation of the EIS. 40 CFR 1501.5, 1501.6. In this project, the Board is the lead agency, and the U.S. Department of Agriculture, Forest Service (USFS), U.S. Department of Interior, Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of Reclamation (Reclamation), and U.S. Coast Guard are the cooperating agencies. The Draft EIS in Section 1.6, lays out the various responsibilities and jurisdiction of the lead and cooperating agencies over the proposed project. The Final EIS in Chapter 1 addresses the procedures each agency must follow before reaching a decision on DM&E's application.

During the scoping process, outlined in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, the Board identified and requested USFS, BLM, COE, Reclamation and Coast Guard to become cooperating agencies in the environmental review process. The Board's Revised Notice of Intent to Prepare an EIS, published on August 7, 1998, indicated that USFS, BLM and COE would be participating as cooperating agencies. Reclamation and the Coast Guard accepted the Board's invitation to become cooperating agencies as part of a notice filed by the Board on January 12, 2000.

COE is the responsible agency for the 404 permitting process, which would be completed after the Board makes its decision on the proposed project. COE extended the comment period on the Section 404 permitting process to March 6, 2001, to coincide with the extension of the comment period on the Draft EIS.

CEQ sets forth guidance for the relationship among lead and cooperating agencies in its document Forty Most Asked Questions Concerning CEQ's Regulations, 46 Fed. Reg. 18026 (1981). The answer to Question 14(b) states that the agencies should work together to ensure that the EIS is as comprehensive as possible and includes information needed for all agencies to evaluate the project. Otherwise, supplemental documents may be needed that would unnecessarily duplicate the EIS process. Thus, for example, both the Draft EIS and Final EIS for the PRB Expansion Project have examined the environmental effects of DM&E's proposed rebuild of its existing line to aid COE's decision-making process. The answer to Question 14(b) also states that the lead and cooperating agencies do not need to reach the same conclusions from the information contained in the EIS just because they are issuing the document jointly. Each agency can identify different preferred alternatives and even indicate distinct environmentally preferable alternatives in their final decisions.

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The Bureau of Reclamation was asked to participate in the project as a cooperating agency after it was determined that an easement would be needed should the WG Divide Alternative be selected.

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Restatement 000155 2

Many commenters opposed the bypass proposals because the bypass would merely transfer the impacts from one area to another and result in land takings from people who never chose to live by a railroad. Several commenters noted that if the City of Brookings supports the bypass, the City should pay for it.

One commenter asked if any of the City' financial support of this new line could be credited as "community sharing of bypass costs." Another commenter indicated that the South Dakota Congressional Delegation supports using Federal highway funds for the Brookings bypass.

Several commenters supported the Brookings bypass, noting that the bypass would reduce noise and traffic impacts and affect fewer people than the route through Brookings. Several commenters stated that many citizens of Brookings were not present to discuss the bypass proposal and this has caused local confusion. Several commenters indicated that SEA has not designed any environmental mitigation specific to the two remaining potential bypass routes around Brookings and that a meaningful Draft EIS must demonstrate a clear comparison between all proposed alignments. Several commenters stated that the socioeconomic impacts of routing the trains through the City would exceed those of bypassing the City and that an increase of trains operating through the City of Brookings would be a detriment to the timeliness and efficiency of service to existing customers.

The City of Brookings has proposed an alternative bypass route that some commenters supported because the route is shorter and would have less environmental impact. Other commenters requested the elimination of this bypass alternative and the original proposed bypass routes because of environmental impacts and because the City is taking a minority position on the subject of the bypass and claiming to speak for all the citizens in support of the new alternative bypass.

Response

SEA acknowledges the comments supporting and opposing the Brookings bypass. SEA reviewed and evaluated the Brookings bypass alternative and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. As part of its review of the public comments on the Draft EIS, SEA also reviewed and considered the information provided by the City of Brookings regarding a modified bypass alternative and determined that the existing route through Brookings is the environmentally preferred alternative. Chapter 6 includes a description of SEA's evaluation and the rationale for its determination of the environmentally preferred alternative.

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Restatement 000155 1

A commenter asked for information on the Brookings, SD alternatives, particularly Alternative B-4: Bypass for all Rail Traffic. The commenter wondered if the Board could project an estimated cost for the Brookings Bypass and said that there was some confusion and discrepancy over the costs of the Bypass.

One commenter said the Draft EIS contained a deficient socioeconomic analysis of Brookings, SD property values and several commenters said the Final EIS needed to contain adequate socioeconomic studies of the Bypass options and state how the Bypass would affect residents, as well as the existing rail corridor, and include appropriate mitigation measures.

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Another commenter said that DM&E needed to file a 404 permit application for the B-4 option, and the Draft EIS needed more data to compare Alternative B-4 and Alternative B-2: Reconstruction of Existing Rail Line option, so the commenter requested refiling of the Draft EIS. The commenter also said that any new Brookings, SD alternatives should prompt the preparation of additional Draft EISs and 404 permit applications, as well as including appropriate comment periods. The commenter said the Brookings Bypass was so complex that it deserved to be studied in a separate EIS, maybe in parallel with the Rochester, MN and Pierre, SD Bypasses. The Draft EIS should compare all proposed alignments, and the data for the Draft EIS and 404 safety studies needed to include end of the year information.

One commenter questioned whether the Board or the City of Brookings could force DM&E to abandon its own property and use other property for a Bypass.

Response

The Draft EIS examined 4 alternatives for the Brookings area in Chapter 4, Section 4.9 (Alternative B-1: No Action; Alternative B-2: Existing Rail Line; Alternative B-3: Existing Rail Line and Bypass for Coal Traffic; and Alternative B-4: Bypass for all Rail Traffic). The Draft EIS addressed impacts to Brookings area property values in Section 4.9.4.2 and socioeconomic impacts to the Brookings areas in Section 4.9.14.

As described in Chapter 4 of the Draft EIS and Chapter 6 of the Final EIS, SEA evaluated the original proposed Brookings Bypass and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. Construction and operation of the Bypass would not serve the purpose and need of the project because the Bypass would not improve service or access to existing shippers. Chapter 6 includes a description of SEA’s evaluation, including a discussion of potential socioeconomic impacts, and the rationale for its determination of the environmentally preferred alternative. The Final EIS details SEA’s recommended mitigation measures in Chapter 12.

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Restatement

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DM&E commented that although the impacts of the project cannot be fully mitigated, public outreach efforts have led to support and agreement from most of the affected communities. But some commenters expressed dissatisfaction with the negotiated agreements agreed to by certain communities. One commenter said that the Mankato City Council reached an agreement with DM&E before the townspeople had their say, so the Board should take the comments of the townspeople into consideration. Another commenter said that community agreements would lose their value without the enforcement of whistle-free agreements.

One commenter said that the Draft EIS did not give the public enough information, so communities entered into negotiated agreements without enough information. According to the commenter, DM&E told communities that the railroad would give them more than the Board, and then put clauses in the agreements that limited public disclosure and prevented public comment. The commenter questioned how the Board could support this unfair process. The commenter also said the Draft EIS stated that local agreements could provide more mitigation than the Board could impose. The Owatonna, MN city council members who were for the Bypass said that DM&E has censored the city council' comments to the Board, so they are concerned that their actual comments will not be clear. They said if they remain silent the Board will not know of their problems, but if they reveal their problems, the Board may do nothing and the railroad will terminate the agreement, leaving them with nothing. Commenters from Owatonna also claimed that a statement in the Draft EIS that indicated that negotiated agreements with DM&E would supersede Board imposed environmental conditions was incorrect. The commenters said that they have always expected the Board to impose environmental conditions, even though they have a negotiated agreement in place, and they even pointed to a specific provision in the community agreement allowing Board conditions to be enforced.

One commenter said that negotiated agreements implied that the no-build alternative cannot be an option, since communities who have entered into negotiated agreements cannot support the no-build option. Since all alternatives must be considered, the commenter said that the Board' support for negotiated agreements is improper. Another commenter said

Similar

that while mutually agreeable mitigation would be beneficial, the Board should put forth parameters and guidelines for negotiated agreements, so the parties' responsibilities would be clear. One commenter said that the railroad has been negotiating with communities over issues not within the communities' jurisdiction, so the Board should make sure all the appropriate parties become involved in the negotiating process. The City of Mankato specifically requested the Board to review its mitigation plan and increase mitigation if the Board feels necessary. The City of Mankato even put a clause in its mitigation plan to have disputes between the city and DM&E come before the Board for resolution.

Response

The Board encourages the development of negotiated agreements between the Applicant and affected communities, including groups of communities and other entities such as state and local agencies. These agreements can be extremely helpful and effective in addressing specific local and regional environmental and safety concerns. Generally, these privately negotiated solutions between an Applicant railroad and some or all of the communities along particular rail corridors or other appropriate entities are more effective, and in some cases, more far-reaching than any environmental mitigation options the Board could impose unilaterally if it grants approval to a particular rail construction project. Therefore, when such agreements are submitted to it, the Board generally will impose these negotiated agreements as conditions to approved applications, and these agreements generally will substitute for specific local and site-specific environmental mitigation for a community that otherwise would be imposed. Regional and system-wide mitigation generally is not affected by negotiated agreements. Moreover, to encourage and give effect to negotiated solutions whenever possible, the opportunity to negotiate agreements will remain available throughout the oversight process to replace local and site-specific environmental mitigation imposed by the agency. The Board will require compliance with the terms of all negotiated agreements submitted to it during oversight by imposing appropriate environmental conditions to replace the local and site-specific mitigation previously imposed.

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Restatement

000161

24

Commenters stated that building more rail line would have negative environmental impacts on the areas traversed. Commenters questioned DM&E' intent to build more track when rail corridors already exist. Commenters also indicated concern for expansion plans, specifically where and if bypasses would be constructed. One commenter acknowledged DM&E' inability to negotiate with the existing Railroad as an indication that they should not expand.

One commenter supported the expansion of the railroad and acknowledged that the expansion would economically benefit surrounding communities.

Response

In its final decision, the Board will consider all of the information in the Draft and Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended mitigation for these types of impacts in Chapter 12.

SEA considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. SEA considered alternative rail routes that would use other portions of DM&E's existing rail system. Chapter 2 of the Draft EIS describes SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). SEA concluded that these alternatives were not reasonable and feasible alternatives to meet the project purpose and need. This determination was based on an independent evaluation of DM&E's rail system and operating information during preparation of the Draft EIS.

In regard to the comment on bypasses, SEA provided a thorough evaluation of bypass alternatives and comparisons of impacts with rehabilitation of the existing route for public review and comment. As described in Chapters 5 (Pierre), 6 (Brookings), 7 (Mankato), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts.

Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Factor:

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Restatement 007546 24

The commentator stated that the information pertaining to land uses along the proposed bypass route (3.3.2.4) is general and insufficiently quantified to identify or compare environmental impacts.

Response

Land use along the proposed bypass routes were obtained from a variety of sources, including locally available maps, site visits, and planning documents. SEA has not recommended any of the proposed bypass routes for consideration in this proposal.

Factor:

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Restatement 000161 3

Several commenters stated that they believed the Government favored DM&E' project and the Draft EIS indicated a biased point of view. One commenter said that the information about the no action or no build alternative in Volume IV, Ch. 6, Section 6.2.1.1 and 6.2.12 seemed not to be taken seriously and questioned whether the Board favored the project and the economic implications of it over the environment. A commenter urged the Board to protect the environment and not to give in to DM&E, while another said the Board should remember to balance competing interests carefully.

One commenter stated that the Draft EIS seems to give the benefit of doubt to rail applicants, which violates the EIS process and distorts the issues, making the project appear more viable than it really is. Another commenter complained that DM&E was included in the Board' meeting process to discuss the project, arguing that such contact between agency and Applicant prevented affected citizens from being given equal opportunity to participate in the project.

Response

The Board's processing of this case has been appropriate. While the Board found that DM&E had satisfied the transportation aspects of 49 U.S.C. 10901 in December 1998, the Board will not issue a final decision on DM&E's project until completion of the environmental review process. Also, the Board's environmental review process is an open process that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA relies on applicants for operational data and project-specific information that only the applicant can provide. SEA conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS responds to all comments, which also are made public.

As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. Five agencies are cooperating agencies in this EIS process. Also, SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving

numerous requests, extended the comment period for an additional 60 days. About 8,500 comments were received during the comment period. The Final EIS addresses the issues raised in the comments.

The Board will base its decision on the PRB Expansion Project on the entire record before it. This will include DM&E's application and comments, as well as all the information received from other interested parties, including members of the public and state, local and Federal agencies, including the cooperating agencies.

Factor:

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Restatement 000163 3

Some commenters stated that the Board needed to speed up the environmental review process and issue a decision on the proposed project soon. A few landowners pointed out that the indefinite nature of the project prevented them from making necessary improvements to their lands.

Commenters indicated that delay would adversely affect the project, and that the Board should set forth a schedule for completion of the Final EIS and issuance of the Record of Decision, so that DM&E could more easily plan with customers and investors. Some commenters said the comment period should not be extended and questioned why the Board is delaying its approval of DM&E's proposed productive project when the Board has approved unproductive mergers in the past.

Response

NEPA requires Federal agencies to take a hard look at the environmental consequences of major Federal actions, such as DM&E's proposed project, that significantly affect the environment. The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is implemented, in order to minimize or avoid potential negative environmental impacts. See *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

In order to comply with NEPA, the Board must prepare thorough, accurate, and ultimately legally defensible environmental analyses. As stated in the Draft EIS, the PRB Expansion Project is the largest and most challenging construction proposal ever before the Board. The proposed DM&E project involves construction of over 280 miles of new rail line and yards in three states, requires the participation of 5 Federal cooperating agencies, and raises numerous diverse environmental issues.

The Board remains committed to reviewing all proceedings brought before it including rail construction cases such as this one as expeditiously as possible. However, the Board must balance the need to move forward with the need to meet its obligations to ensure a thorough, adequate and legally sound environmental review under NEPA and related laws. Conducting a meaningful environmental review takes time and is critical to ensure the legal defensibility of the Board's decisions and, ultimately, to minimize delay in the processing of cases and in the implementation of transactions that are approved.

Factor:

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Restatement 001720 6

The commentator states the Draft EIS general lacks specific criteria that DM&E will be required to meet in mitigation measures.

Response

Chapter 12 of this Final EIS provides the detailed criteria of mitigation on a resource-by-resource basis. The proposed mitigation is prefaced by a discussion of the roles and responsibilities of the Board and the Applicant for the mitigation process.

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Restatement	000244	8
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Several commentors stated mitigation measures must be paid for entirely by the railroad DM&E and not the public through tax dollars. Such mitigation costs must be factored into the viability of the project and left for DM&E to include in their cost. DM&E must pay all the externalities of this project and operating this proposed unit coal train. Citizen tax money should not go to buying the real estate, building the over/under passes, and crossing improvements. In addition, individuals/communities along the coal line must be compensated for their losses. DM&E must be made to bear the cost of mitigating noise, vibration, traffic, and safety problems that are created by the expansion including the cost of a bypass. The U.S. Department of Transportation policy states to reduce the social costs of environmental degradation and to ensure that these social costs are more accurately reflected in the price of transportation services. If DM&E is not willing or able to pay full cost of mitigation measures required the project should be denied. A full and complete mitigation plan should be part of the Final EIS in order to quantify fully the impact and cost for each action alternative.

Other commentors indicated the Draft EIS reveals that SEA failed to assess the individual and cumulative costs of the imposition of its proposed environmental mitigation on the overall viability of the project. Financial costs incurred by the DM&E for reconstructing the in city route and associated mitigation features under any scenario will most certainly exceed the total costs of constructing the bypass and related mitigation. Indeed, the expenditure of \$34 million of probable costs of mitigation under Alternative B-2 will not assure acceptable mitigation of the adverse impacts of Alternatives B-2. State and local governments should not be responsible to pay for mitigation for a private project with inherent benefits to the communities it passes through.

One commentator states this is not a new problem. Nearly a century ago, Chicago, the then railroad capitol of the world required railroads to build elevated tracks and treaties to minimize their impact on the city and its citizens. The expense was paid for by the railroads. This sound precedent can be applied here. The DM&E should pay for elevated tracks and crossing improvements, it should also be required to cushion its tracks to minimize vibration to current property owners.

One commentator states a scenario has surfaced that suggests DM&E could save money on construction costs, build a lighter duty railroad if they specialized in returning empty trains to the PRB while the full trains could go on the existing up and BN trackage. This is a bit unlikely but the tonnage milestones should be changed to trains so the belated safety provisions of local community agreements could kick in.

One commentator indicates Rochester is a wealthy city. If the bypass is done, Rochester should have to pay the cost. Other mitigation such as evaluated tracks, or more under/overpasses, sound deadening, etc. should be considered before a bypass. Costs to mitigate the impact on Rochester if the rail line goes through the city should be split between DM&E and Rochester.

One commentator states the financial costs incurred by the DM&E for reconstructing the in city route and associated mitigation features under any scenario will most certainly exceed the total costs of constructing the bypass and related mitigation. The expenditure of 34 million of probable costs of mitigation under Alternative B-2 will not assure acceptable mitigation of these adverse impacts of Alternative B-2.

Response

A detailed discussion of mitigation is provided in Chapter 12 - Mitigation of this Final EIS. the negotiated agreements between the Applicant and the communities specify the financial responsibility of each party for improvements and mitigation. Additionally, SEA's recommended mitigation specifies mitigation for which the Applicant should be responsible. Cost considerations are also presented in the narrative provided in Chapters 4 through 9 of this Final EIS. Cost figures are estimated for each of the alternative build scenarios.

The project was determined to possess financial viability by the Board as previously documented in Appendix A of the Draft EIS.

Construction of elevated rail was not considered viable for the type of freight on the DM&E line. In some cases, elevated track can exacerbate problems (noise, visual impact, etc.). The Applicant will be responsible for many of the crossing improvements associated with the proposed project. Likewise, use of competitor rail line was not considered feasible for the proposed project.

Chapter 9 of this Final EIS provides additional analysis - including cost comparisons - of the in-city and bypass routes for the Rochester area. SEA has not recommended a bypass of Rochester for this project.

Factor: 0

Restatement 000527 6

One commentor stated DM&E has not been honest regarding the impact of the proposal. The Draft EIS did not address the true impact to the environment in Custer County. It is unclear how a private business like DM&E can destroy a private business like a ranch.

Response

SEA believes that the analysis supporting the conclusions presented in the Draft EIS was conducted in an honest and open manner. The concern for the property in question should be negated due to SEA's determination that a Bypass of Pierre is not a preferable alignment. There will be no impacts to the ranch identified in this comment.

Factor: 0

Restatement 000232 5

Commentor asks if funding for the project is any closer than it was in June of 1997.

Response

The Board has reviewed the financial records that were submitted by the Applicant as part of their application, and determined that the project had financial viability. The NEPA process did not consider the timing of funding as part of this analysis.

Factor: 0

Restatement 000244 5

Commentor asks who pays for the DEIS and COE 404 Permit Application Report.

Response

The Applicant is responsible for those costs pertaining to environmental analysis and permitting.

Factor: 0

Restatement 000194 1

The commentor states many of the basic assumptions regarding needed environmental mitigation measures rely on detailed studies completed by the STB and its consultants on

traffic impacts, air quality impacts, noise and vibration impacts, and environmental justice impacts. The community will need time to review all the information, retain consultant services, and prepare an equally detailed response.

Response

The public review period from the time of the publication of the Draft EIS to the publication of the Final EIS will be over one year. SEA believes that this review time, coupled with public and agency comments has allowed for meaningful input into the process. The proposed mitigation presented in the Draft EIS has been expanded to further capture potential impacts identified for the proposed project. SEA has made every effort to make the process impartial and technically sound.

Factor: 0

Restatement 000260 1

Many commenters commented on the adequacy and accessibility of the Draft EIS. Commenters stated that the Draft EIS was poorly organized. Commenters complained that the lack of an index makes navigation through the paper text of the document laborious and use of the CD-ROM version impossible. One commenter indicated that the packaging of the document, both in paper and CD-ROM format, appears to be purposefully obstructive, rather than helpful.

In addition to the inclusion of an index, commenters suggest that general terms, and terms not commonly known, should be defined within the document. Commenters attribute the complexity of the document to illegible graphs, a convoluted numbering system, inadequate and antiquated maps, and repetitive text with randomly embedded information.

The lack of designated routes and maps in the Draft EIS and the indications within the document that the final design is not complete makes it difficult to determine which lands would be affected. Commenters requested a complete business plan and specific information about rail routes and applicable proposed mitigation.

Response

SEA and the cooperating agencies worked hard to provide a comprehensive environmental impact analysis in the Draft EIS. The complexity and broad geographic scope of the DM&E project resulted in a large, complex document. Where the public has identified specific areas that are unclear or confusing, SEA and the cooperating agencies have provided additional clarifying information and responses to those specific comments in this Final EIS. This Final EIS provides additional clarifying information regarding the recommended mitigation in Chapter 12. As suggested by commenters, the Final EIS contains an index for more convenient navigation through the document.

Factor: 0

Restatement 000227 7

The commentator states there are generally inadequate requirements with much depending on the good will and "environmental sensitivity" of the Applicant. For such a major project and with the limited resources that DM&E presently has, there will be much pressure to cut corners. In fact, the Applicant will have every incentive to minimize costs and therefore, mitigation, wherever possible in order to compete with UP and BNSF.

Response

SEA directs the reader to Chapter 12 of this Final EIS and a discussion of the oversight responsibilities of the Board in the mitigation process. SEA believes DM&E understands that it is in the best interest of DM&E to adhere to the mitigation measures that are proposed.

Factor:**Restatement** 001523 7

Several commentor stated that the Draft EIS contained vague terminology. The following examples were provided:

1. The Draft EIS recommendations use the word "consult" as the operand in their recommendations as opposed to "shall". The commenter believed "consult" to be essentially meaningless, and that it implied no responsibility to actually implement any suggested action where consultation is suggested.
2. "In Chapter 7, the agency's proposed mitigation is composed primarily of exhortations to follow existing law, make plans, and consult with various people and agencies. Words like "reasonable" and "adequate" and "where appropriate" are not defined.
3. The Board did not suggest or require specific mitigation measures for DM&E to meet, and for public comment. Rather, vague words and suggestions like "DME and comminutes will negotiate or work out mitigation agreements" were used. The commenter was also concerned with statements like: "encourage DME to communicate with concerned residents and affected communities and use community input to develop voluntary mitigation and agreements," "encouraged DME to negotiate mutually acceptable agreements with affected communities and other government entities.... including ways to share the costs associated with project related environmental mitigation measures. Negotiated agreements could be with neighborhoods, communities, counties, cities, regional coalitions, states and other entities." Furthermore, in numerous locations on mitigation phrases like "take reasonable steps to implement adequate measures to minimize the potential for these to occur," "minimize damage to paleontological resources...consult with affected communities...." These are not acceptable.
4. The list of proposed mitigation measures in Volume IV, Section 7.7 are vague and generic.
5. Page ES-86 states applicants shall inspect temporary construction fencing regularly and promptly repair any damage. The mitigation is too vague, "regularly" and "promptly" must be quantified to effectively mitigate the problem caused by the proposal.
6. The mitigation section is peppered with words like "shall consult," "properly maintain" "to the "...be guided by Land Owners Advisory Board". It may be an indenting problem, but we don't know who the air quality working group is, nor how they will reach "recommendations" about very real air quality concerns in Olmsted County.
7. Oversight and enforcement provisions of the mitigation package need to be more clearly defined. Overall, the mitigation measures are too vague, to the point they are unenforceable. The utilization of third party environmental inspectors is essential. The mitigation section should more clearly define the inspectors' role and authority. The Federal Energy Regulatory Commission has an exceptional system of environmental inspectors and BMPs in place for pipeline projects and we propose that their system be adapted for use on this project.
8. There's only 28 pages out of 5,000 dedicated to mitigation. Giving the initial impression that the STB was not serious about seeking solutions to neighbors very real concerns. It is loaded with words such as "to the extent possible" or "where practicable" or "where appropriate" or "shall attempt" or "shall consult" or "shall work with" that shifts responsibility from DM&E. There is no criteria, no accountability, the neighborhood would be left virtually powerless against the railroad.
9. Rochester seeks clarification of proposed condition 103.

Response

SEA conducted an extensive analysis pertaining to each individual resource potentially impacted due to the proposed project. Detailed results are discussed within the appropriate sections of the text; and are then summarized to reduce duplication. In addition, due to the wide scope of the proposed project, a variety of cooperating agencies are involved. In order for SEA to compliment the numerous required needs of this wide range of agencies, it became necessary to include terminology that best represented the needs of all the cooperating agencies involved. Chapter 12 of this Final EIS provides a detailed narrative of the roles and responsibilities of the Applicant, the Board, and other groups (e.g., agencies, communities with negotiated agreements). The language used in this chapter reflects the conditions and recommendations set forth for mitigation.

Factor: 0

Restatement 001332 2

The commentor doesn't trust DM&E to stick with any contract terms. DM&E could sell to another company and they wouldn't uphold the contract terms.

Response

The Board reviewed DM&E's Application and found that the proposed project had merit. Ongoing safety concerns and the need to expand business operations are key elements of the DM&E proposal. Any future owner of the railroad would be faced with the same concerns. Any sale of the railroad would include those agreements signed by DM&E to improve conditions or mitigate impacts.

Factor: 0

Restatement 007545 5

The commentor commends the Board for attempting to evaluate all of the environmental impacts of the PRB Expansion.

Response

SEA acknowledges the comment and refers the reader to the Final EIS for a further evaluation of proposed project impacts and mitigation.

Factor: 0

Restatement 007556 5

The commentor states the Draft EIS is erred in calculating both the environmental impacts of DM&E's current operations and the environmental consequences of DM&E's proposed operations. Any STB order approving the DM&E project based on a faulty environmental review could be affirmed by a reviewing court.

Response

SEA has made every effort to accurately characterize the existing conditions and impacts of the proposed action on the natural and man-made environment. Additionally, SEA has used the public review of the Draft EIS to identify areas where additional evaluation was needed. This added information is presented in this Final EIS.

Factor: 0

Restatement 002750 1

The commentor states that the STB has concluded that additional information is needed to asses the alternatives for the Olmsted County area, and specifically has requested more

information from interested parties on the three alternatives studied: no-build, southern bypass, and mitigation along the existing right-of-way.

Response

Chapter 9 of this Final provides additional information related to Olmsted County and the potential for impacts to occur under each alternative, R-1, R-2, R-3, and R-4. Additional analysis included topographic and geographic impacts and emergency response capabilities.

Factor: 0

Restatement 003152 5

The commentor states a table summarizing the impacts of each alternative for easy comparison would be appreciated. Pages ES-221 contains a table that is of little consolation, rating impacts from not significant too highly significant. Show the numbers and explain how the thresholds were determined.

Response

SEA conducted an extensive analysis of each individual resources for each alternative. Findings were illustrated throughout the Draft EIS in both tabular as well as textual format to provide simplicity, as well as detailed explanations. Potential impacts to each resource are discussed in the appropriate section of the Draft EIS for all the alternatives. As appropriate, comparisons of the EPA threshold standards and potential increase due to the impacts of the proposed project are illustrated and explained for each relevant issue in the corresponding sections of the Draft EIS. Discussions were then summarized to reduce the likelihood of redundancy in the text.

Factor: 0

Restatement 002372 2

The commentor states there are serious safety concerns and solutions must come before construction.

Response

SEA recognizes that safety measures must be in place prior to the commencement of any construction. Safety measures will include coordination with local and state authorities to review construction plans and methods for making construction zones safe for traffic, pedestrians, and emergency vehicles.

Factor: 0

Restatement 007541 9

The commentor states the Final EIS should recognize that the imposition of mitigation could have significant adverse effects on the operating capacity, efficiency, and net benefits of the transaction and DM&E's ability to complete the project.

Response

SEA recognizes the cost of mitigation measures. SEA believes that the proposed mitigation measures found in Chapter 12 of this Final EIS provide the Applicant with reasonable measures to ensure safety and resource protection.

11/15/2001

Similar
0

Factor:

Restatement 006454 32

The commentor states in addition to the agencies mentioned on page ES 91 of the Executive Summary, DENR should be consulted concerning best management practices.

Response

SEA acknowledges the comment and notes that the Applicant should also coordinate with the South Dakota DENR on permitting and best management activities related to construction and operation of the DM&E in South Dakota.

Factor:

0

Restatement 000234 9

Some commenters stated that they believed the environmental review process had not satisfied NEPA, although one commenter acknowledged that NEPA only requires agencies to take a hard look at environmental impacts, and that it is not necessary, under NEPA, to disapprove an action just because it causes environmental impacts that cannot be totally mitigated.

1. Format of the Draft EIS

One commenter said that the Draft EIS should have included an index and that 40 CFR 1502.10 recommends a standard format for Draft EISs to have a standard format, which includes an index. Another commenter pointed out that the fragmentation of topics, such as air quality made it difficult to identify the cumulative impacts of the project.

2. Public Participation and Review Requirements

One commenter said that not notifying the affected people on the WG Flat Alternative near Oral, SD or including them in the scoping process violated NEPA. Another commenter said that requiring commenters to send the Board multiple copies of comments over 5 pages was unduly burdensome, and that preventing the public from reviewing sources of information violates NEPA's goal of public participation. Another commenter pointed out that 40 CFR 1502.21 states that material incorporated by reference should be reasonably available for inspection by potentially interested persons during the comment period.

3. Discussion of Alternatives

One commenter said the Draft EIS did not fulfill NEPA's "hard look" requirement because the discussion of project alternatives was inadequate. The commenter said the Draft EIS should include specific alternatives and research on them, as well as the agency's choice of a preferred alternative for all project components with specific mitigation recommendations. The commenter said the Board's request for the public to develop additional alternatives showed a transfer of responsibility, and that if the Board lacks the capability to prepare an adequate EIS, another agency should do it. Another commenter said that NEPA requires only that an agency consider alternatives that are reasonable and feasible, and that alternatives that would cause similar or greater environmental harm do not need to be considered.

4. Discussion of Adverse Effects

Another commenter said the Draft EIS did not state the unavoidable adverse effects of the project in the environmental consequences section, as required by 40 CFR 1502.16.

Response

1. Format of the Draft EIS

The Draft EIS was organized consistent with NEPA and CEQ guidelines at 40 CFR 1502.10. It was intended to provide clear and concise information to the public and agency decision makers on this extraordinarily complex project. In accordance with 40 CFR 1502.10, the Draft EIS described the proposed project, alternatives, existing environment of the proposed project, and the potential environmental impacts associated with the proposed project. Chapters and specific topics within each chapter were outlined in the Table of Contents and numerically coded to aid the reader in locating individual areas of interest. Tables and figures were listed numerically by the chapter in which they occurred. Appendices were denoted with alphabetic characters and included at the end of the EIS.

2. Public Participation and Review Requirements

Opportunities for public participation in the environmental review process in this case have been extensive. As stated in the Draft EIS in Section 1.7 and the Final EIS in Chapter 1, SEA conducted numerous scoping and public outreach meetings to involve the public and state, local and Federal agencies in the PRB Expansion Project. SEA conducted meetings and consultations, scheduled many site visits, placed information on the Board's official website, and provided a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information material. These outreach materials provided descriptions of the project and SEA's environmental review process to facilitate and encourage public understanding and participation. After issuing the Draft EIS, the SEA invited comments from all interested parties. SEA initially proposed a 90-day comment period for the Draft EIS, which is twice the minimum amount of time required by the Council on Environmental Quality regulations implementing NEPA, but after receiving numerous requests, extended the comment period for an additional 60 days. Oral hearings also were held in several communities after issuance of the Draft EIS. The Draft EIS and its appendices provided ample documentation and citations for the public to review SEA's conclusions. It would have been impossible to reproduce in full all the material cited and incorporated by reference given the complexity of this project.

3. Discussion of Alternatives

As stated in the Council on Environmental Quality's (CEQ) regulations implementing NEPA at 40 CFR 1502.14, the analysis of alternatives in the EIS constitutes the most integral part of the document. All reasonable alternatives must either be examined in detail or an explanation of why they were omitted from detailed analysis must be provided. As NEPA and the CEQ regulations require, the Draft EIS examined several alternatives for each of the project components, including the No-Action Alternative. SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was needed to determine the environmentally preferable alternative for other project components. In the CEQ guidance "Forty Most Asked Questions Concerning CEQ's" National Environmental Policy Act Regulations (Forty Questions), the answer to Question 6(a) states "that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS."

According to answer 4(b) in Forty Questions, if the agency has not determined a preferred alternative or alternatives before issuance of the Draft EIS, it does not need to designate the preferred alternative or alternatives until the Final EIS. SEA's approach is consistent with Forty Questions.

4. Discussion of Adverse Effects

Chapter 5 of the Draft EIS detailed the cumulative environmental impacts of the proposed project.

11/15/2001

Similar
0

Factor:

Restatement 000376 9

The commentor states the mitigation measures suggested have no enforcement vehicle. Without enforcement such measures are meaningless.

Response

Chapter 12 of this Final EIS provides a discussion of the Board's authority to impose conditions in actions brought before it. Included in this discussion is information related to negotiated agreements between the Applicant and communities, voluntary Applicant mitigation, and mitigation related to pre-existing conditions.

Factor: 0

Restatement 000512 1

Several commenters opposed the construction of a rail yard in the vicinity of their property because of noise disturbance, road traffic, dangerous emissions, frequent road closure, or diminished scenic view. One commenter stated that the closure of Road #13 to build the staging yard between Utica and Lewiston, MN would cause delays for emergency response vehicles. One commenter supported the Option B rail yard because few natural resources would be affected and reiterated their opposition to the plan to put the rail yard in Garvin Brook. This commenter also opposed a proposed rail yard in Minneopa State Park, Option A, because of potential negative impacts, and called for the elimination of the alternative from consideration. Another commenter supported the Option A alternative because the rail yard would not actually go in the park, but next to the park. This commenter stated that environmental impacts from Option B would be worse than Option A. Another commenter urged the Board to deny the request for a staging yard in the Shag Road location and asked for concessions and remuneration if the Board approves the project. The tribes from the Fort Berthold Indian Reservation asked to help select the final location of Staging and Marshalling areas in the event the proposed project is approved and for clarity on the plans for construction.

Response

Chapter 4 includes additional discussion and evaluation of the Middle East Staging and Marshalling Yard and alternative locations. Based on this evaluation, SEA has determined that Option B is the environmentally preferred alternative, if the Board approves the project. Chapter 4 includes discussion of SEA's evaluation of potential impacts for each option, including the potential impacts to wetlands. The final locations of other Staging and Marshalling yards are determined by the selection of the preferred alternative, Alternative C.

Factor: 0

Restatement 000513 1

One commenter was concerned that small towns like Cambria, Minnesota do not have a voice in the decision making. This commenter stated that the increase in rail traffic would make it hard for the citizens of Cambria to travel out of town for work and school. This commenter also pointed out that emergency vehicles could be obstructed from entering or exiting the town.

One commenter criticized DM&E' unwillingness to reasonably negotiate on a proposed tunnel in Rochester and asked that the Board require DM&E' cooperation.

Response

SEA and the cooperating agencies implemented an extensive outreach plan with the specific intent of providing equal opportunity for the affected public to voice concerns. SEA and the cooperating agencies then reviewed the written and oral comments on the Draft EIS. The Final EIS provides clarifying information and responses to the substantive comments on the Draft EIS. The Board and the cooperating agencies will base the final decision on an objective assessment of the complete available information. The Board will consider the Draft EIS, the Final EIS, public comments, and responses to public comments in its final decision regarding the proposed project.

In response to the comment regarding impacts to small towns, if the project is approved, the Board will also require DM&E to implement mitigation to address environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation for community and environmental impacts where reasonable and practical. The Final EIS includes SEA's recommended mitigation in Chapter 12.

In response to the comment regarding the proposed tunnel in Rochester, SEA notes that the City of Rochester considered several options to mitigate train impacts in Rochester and developed the Rochester Bypass Alternative as its preferred alternative for SEA to evaluate in the Draft EIS.

SEA encourages DM&E and communities to negotiate, however SEA does not coordinate nor dictate the results of these negotiations.

Factor: 0

Restatement 001093 1

One commenter raised concerns about the Owatonna Community Partnership Agreement, which is the negotiated agreement between Owatonna, MN and DM&E. The commenter said specific issues relating to sound, property value and crossing delays were not incorporated into the agreement and the commenter hoped that the Board would address such issues. The commenter questioned the determination in the Draft EIS that because Owatonna had withdrawn its bypass proposal, it is no longer being considered, even though SEA indicated in the Draft EIS that the Owatonna Bypass would be reasonable and feasible.

Response

The purpose of negotiated agreements is to arrive at voluntary, mutually satisfactory arrangements between the railroads and the affected parties. Therefore, it would be inappropriate for SEA or the Board to intervene formally in the parties' negotiations, or to impose restrictions on the content or extent of the negotiations. The Board's practice is generally to require compliance with the terms of all negotiated agreements submitted to the agency in lieu of the local and site-specific mitigation that the agreements would replace. Regional and systemwide mitigation generally is not affected by negotiated agreements. In the Draft EIS, SEA indicated that the Owatonna Bypass would be reasonable and feasible, but dropped it from further consideration after Owatonna withdrew it. The decision to do so was appropriate and consistent with NEPA, because SEA's analysis showed that the Owatonna Bypass is not environmentally superior to the other Owatonna alternatives. Rather, the environmental impacts associated with the Owatonna Bypass are essentially the same as those associated with the other Owatonna alternatives, and the Owatonna Bypass would largely shift those impacts from one location to another.

Factor: 0

Restatement 000155 14

1. Board Policy

Some commenters said they wanted more information on the Board's environmental review and project approval processes. One commenter asked whether the Board had ever denied a rail expansion project. Another commenter accused the Board of acting irresponsibly on this project. A commenter alleged that the Board provided more information to the applicant than to other interested parties. Another commenter said that the Board practices antiquated policies that favor the railroad instead of people, and if the Board does not impose appropriate mitigation for Rochester, the agency's image will be ruined. One commenter questioned whether railroad policy has been modified from 100 years ago, and said that the Board needed to update Federal railroad policy in order to properly review the project.

2. Inadequacies of the Board's Process

One commenter said the lack of Council on Environmental Quality (CEQ) compliance in the Draft EIS indicates that there was inadequate guidance, participation and independent evaluation, and that it seems like SEA does not have enough personnel to complete the project. A commenter said the Board had left it up to the public to decide contentious issues, such as the Rochester option, the Brookings option, yard options and other mitigation, and that if the Board cannot make politically difficult decisions, another agency should become the lead agency for the project.

3. Suggestions for Modification of the Environmental Review

One commenter suggested that the Board should consider as part of its environmental review the analysis of environmental impacts to areas that are significantly affected but do not meet SEA's thresholds for environmental review. Another commenter said other cases, such as *Idaho Pub. Util. v. I.C.C.*, 35 F.3d 585 (D.C. Cir. 1994), have viewed the Board's practice of imposing consultation conditions as insufficient mitigation, so the consultation conditions in the Draft EIS cannot be considered as adequate mitigation.

Response

1. Board Policy

Congress has recently addressed Federal railroad policy by enacting the Board's governing statute, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), in 1995. ICCTA sets forth the Board's jurisdiction and authority, including the Board's authority to authorize rail constructions. Congress also enacted NEPA in 1969 to require Federal agencies to consider the environmental consequences in every recommendation or report on major Federal actions significantly affecting the quality of the human environment. See 42 U.S.C. 4332(2)(C). The Council on Environmental Quality (CEQ) has defined major federal actions to include projects regulated or approved by Federal agencies, which in the Board's case, would include rail constructions. The Board's regulations implementing NEPA are listed at 49 CFR Part 1105. The Board revised these regulations in 1991. See *Implementation of Environmental Laws*, 7 I.C.C.2d 807, 817 (1991).

Although a procedural statute, NEPA ensures that the public has a voice in the environmental review process. NEPA requires Federal agencies to conduct extensive public outreach and to solicit public participation throughout the environmental review process. The Board's environmental review process is based on this recent legislation, and is an open process that allows multiple points of view to come before the Board. The Board's process incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA initially meets with applicants to gain an understanding of the proposal and obtain project-specific information that only the applicant can provide. SEA then conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs and EAs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS or post-EA responds to comments, which also are made public, and sets forth SEA's ultimate environmental recommendations to the Board.

In *Indiana & Ohio Railway Co., Constr. and Operation in Butler, Warren, and Hamilton Counties, OH*, 9 I.C.C. 2d 283 (1993) the ICC (the Board's predecessor) denied a rail construction application based on the recommendations in the EIS. The EIS indicated that the environmental impacts, namely public safety concerns, could not be effectively

mitigated, and included recommendations for the no-build alternative. The agency concluded that the environmental impacts outweighed the transportation benefits of the proposed construction, and denied the construction application.

2. Inadequacies of the Board’s Process

SEA relied on CEQ regulations when preparing the Draft EIS and worked closely with EPA in the development of the Draft EIS. SEA submitted the Draft to EPA’s Office of Federal Activities (OFA) for its review and comment. OFA responded by issuing a detailed comment letter. Representatives of EPA also attended public comment meetings held after issuance of the Draft EIS. EPA will review and rate the Final EIS.

In the Draft EIS, SEA preliminarily recommended the environmentally preferable alternative for most of the project components, while stating that additional information was needed to determine the environmentally preferable alternative for other project components. In the CEQ guidance Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations (Forty Questions), the answer to Question 6(a) states that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS.

SEA has identified the environmentally preferable route for each alternative of the proposed project in the Final EIS.

3. Suggestions for Modification of the Environmental Review

SEA’s recommended mitigation for the proposed project is far-reaching and goes well beyond consultation conditions. In Idaho Pub. Util. v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994), the court faulted the Board’s predecessor agency, the ICC, for simply imposing environmental conditions that required subsequent consultation and permitting by other agencies in lieu of the ICC undertaking its own analysis. In this case, however, SEA has taken the requisite hard look at the environmental consequences of DM&E’s proposed project, has issued an extensive and comprehensive EIS, and has developed extensive mitigation measures in response to the data collected. Unlike Idaho, the consultation conditions recommended here were imposed after SEA had itself taken the requisite hard look at potential environmental impacts. There has been no improper delegation to other agencies in this case.

Factor: 0

Restatement 000182 14

The commenter believes DM&E has lied and deserves punishment; the plan will severely damage a unique, dynamic city; the plan presents higher than normal risks to the citizens of Rochester.

Response

The Board has reviewed the DM&E Application for the proposed project and has determined the project to have merit. SEA has attempted to conduct a thorough and impartial review of the potential impacts of the project on the natural and man-made environment.

Factor: 0

Restatement 000404 16

Several commentors said the Draft EIS had the following errors:

Volume 3 states that Fall River County has 12,000 acres of prime farmland, all of it irrigated. Yet the WG Flat Route which seems to be the preferred route, cuts right through the middle of the irrigation District, taking 887 acres of prime farmland out of production. Therefor, DM&E's attempt to minimize impacts didn't work. [000404 16]

The Draft EIS includes statements like the repeated assertion that improved safety would be the "primary environmental benefit" of the proposed project. It is unclear how this conclusion was reached, given the STB's over enthusiastic conclusions regarding other types of benefits, particularly economic benefits, and its observation that increased rail operations would offset some safety improvements.

The Draft EIS should contain more grammatically correct words such as affected, altered, changed, removed, filed disturbed, or modified instead of impacted. Due to the small size of the maps it was difficult to get an overall sense of various project features relative to one another. Additionally, the locations of specific/existing water crossings were not indicated on the maps.

Response

After extensive analysis was conducted on all alternatives, SEA determined the WG Divide Alternative to be the preferred route due to the fact that it minimizes impacts on all relevant areas of the environment, not simply one farmland.

To provide convenience, the maps were reduced to a size suitable for insertion into the text. SEA's analysis was conducted using much larger maps however, therefore various project features were highly visible.

The project impacts are extensively analyzed throughout the Draft EIS. Generalized terms within the summary were used to reduce redundancy in the text discussions. Due to the complexity of the proposed project, SEA felt it would simplify the content, as well as provide consistency for various readers, to use the suitable term "impacted."

Factor:

0

Restatement

001523

16

Several commentors stated Chapter 7 of the Draft EIS "Section of Environmental Analysis's Proposed Environmental Mitigation" is lacking the kind of detail that would provide some assurance that adequate mitigation will occur. As an example, only one bridge crossing (Missouri River at Pierre, SD) is specifically mentioned as needing best management practices to control turbidity and disturbance to bottom sediments. Mitigation for impacts to other resources, such as Garvin Brook, with eight crossings in few miles of track, should also be specifically discussed. Further, specific mitigation practices, such as those found in the Federal Energy Regulatory Commission guidelines for pipeline projects, and the use of sedimentation basins, should be cited. The mitigation chapter makes no mention of Minnesota waters or karst geology. Page 7-28 contains just two statements related to monitoring and enforcement. The second statement indicates that the applicant shall retain a third party contractor to assist in monitoring and enforcement on an as needed basis. Also mitigative steps for addressing air quality concerns were not described. Depending on the results of Minnesota specific air quality impact assessment, it may be appropriate to address these in this section. In addition Chapter 7 gives the impression that SEA will be held responsible for everything. DM&E is responsible for enacting the required mitigation, SEA is responsible to see that it is done. In Chapter 7 the STB invites the public to let it know if a community is unique in some way and to suggest any mitigation needed as a result. If the STB does not know the unique characteristics of each town along the route by now. It has not done the work necessary to an adequate Draft EIS. The public should not have to do the agency's work.

Response

Chapter 12 of this Final EIS provides detailed mitigation to address potential impacts from construction and operation of the proposed project. In addition, Chapters 3 through

9 provide additional detail and narrative for the proposed impacts to specific communities. Impacts related to existing, parallel, and new bridge structures are found in Chapter 5 - Pierre. A discussion of the karst topography in the study area is provided in the discussion about Rochester in Chapter 9. The specific conditions of SEA's proposed mitigation measures are found in Chapter 12.

Factor:

0

Restatement 007541 18

The commentor states the Coal Consumers urge SEA and the Board to evaluate the environmental impacts of the DM&E's Application in a manner that helps assure future competitive and reliable coal transportation service and adequate rail transportation capacity in moving PRB coal to market. The nation's interest in the full use of its largest low-sulfur coal reserves as fuel for the generation of electricity remains at stake and should be carefully considered when evaluating alternatives through the EIS process.

Response

SEA has used the NEPA process to evaluate all aspects of the proposed project on both the natural and built (man-made) environment. The purpose and need of the project are clearly stated in both the Draft and Final EIS. The evaluation of environmental impacts were made in the context of this purpose and need.

Factor:

0

Restatement 000161 30

Some commenters questioned DM&E' financial situation and its need for the proposed project.

1. DM&E' Finances

A commenter inquired as to DM&E' current profits and said that the railroad' goal is to profit at the communities" expense. Another commenter said that having communities pay DM&E for mitigation measures would be unfair.

A commenter stated that the Board should not rush the environmental review process to accommodate DM&E. If DM&E cannot bear the financial burden of the environmental review process then the Board' earlier findings should be re-examined, because the Board found DM&E financially fit to apply for the project. Another commenter said DM&E' finances appear suspicious, since DM&E applied to FRA for \$100 million and rumors circulate that DM&E is trying to refinance its loans.

2. DM&E' Need for the Project

One commenter said DM&E' entire plan to build a new corridor did not make sense and that DM&E should just use its existing corridor. DM&E' project seemed to be just a show of its power, according to the commenter. DM&E' statement that without the project the railroad would cease to exist appears to be a threat, according to one commenter. Also, the analysis of the no-action alternative in the Draft EIS at ES-22, ES.8.1 relies on information from DM&E, making the section biased. But one commenter said without project approval, DM&E could not become competitive in the market place.

3. DM&E Has an Unfair Advantage over Citizens

Some commenters stated that they believed DM&E had too much power in the situation. One commenter complained that DM&E had more money and political support and that citizens" efforts to protect the environment would prove to be futile.

Another commenter stated that the entire proposal appeared to be too ambiguous and that the upgrade should be denied because of the adverse effects on property values. A commenter also said that since the public has not been given the chance to view DM&E' application and amendments completely, confusion as to the real nature of the project remains.

Response

1. DM&E's Finances

The Board's processing of this case has been appropriate. While the Board found that DM&E had satisfied the transportation aspects of 49 U.S.C. 10901 in December 1998, the Board will not issue a final decision on DM&E's project until completion of the environmental review process. The Board is aware of its responsibility to balance the need to move forward with the need to meet its obligations to ensure a thorough, adequate and legally sound environmental review under NEPA and related laws.

2. DM&E's Need for the Project

Chapter 1 of the Draft EIS discussed the purpose and need for DM&E's proposed project. DM&E's proposed project would extend DM&E's existing system westward into the PRB region of Wyoming, allowing DM&E to connect to coal-producing mines in the region. Construction and operation of this project would provide additional rail carrier access to the region and facilitate transport of coal eastward from the mines over DM&E's existing system. The Board, in its December 10, 1998 decision, indicates the No-Action Alternative could result in DM&E ceasing to be a viable railroad. In addition to the discussion in the Executive Summary at ES-22 to ES-24, the various chapters of the Draft EIS addressed the effects and impacts of the No-Action Alternative for each of the project components.

3. DM&E Has an Unfair Advantage over Citizens

To meet its responsibilities under NEPA and related environmental laws, the Board must consider potential beneficial and adverse significant environmental impacts in deciding whether to approve a construction as proposed, deny the construction, or approve it with conditions, including environmental conditions. Also, the Board's environmental review process is an open process that allows multiple points of view to come before the Board and incorporates extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. SEA relies on applicants for operational data and project-specific information that only the applicant can provide. SEA conducts public outreach at the early stages of the environmental analysis, to promote notice of the proposal and to obtain input on potential environmental impacts and issues associated with the project. SEA issues EISs in draft form for public review and comment and consults with appropriate Federal, state and local agencies. The Final EIS responds to all comments, which also are made public. The NEPA process ensures that agencies make informed decisions that evaluate the environmental consequences of a proposed action. As stated in the Council on Environmental Quality's regulations implementing NEPA at 40 CFR 1500.1(c) "[t]he NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment."

Factor:

0

Restatement

003809

30

One commentator stated that the Executive Summary shows an incomplete list on Page ES-87, No. 33. The commenter stated that should the projects go forward, the Applicant should be responsible for applying the Land Use Mitigation Policy and Plan to the displacement of homes and residences, as well as businesses that depend on the use of the land.

Response

SEA has conducted an analysis of impacts to homes and businesses as part of this EIS. Land takings will be minimal due to the fact that SEA has recommended no bypasses that will destroy agricultural or open land. In addition, most impacts to businesses will be temporary in nature during construction. Some businesses will experience temporary access problems. Impacts to residences are expected to occur from noise. DM&E will work with any residents and business owners to reach fair settlement for any takings.

Factor: 0

Restatement 007708 1

The commenter stated that Steele County Board opposed Owatonna's proposed railroad bypass, which was withdrawn. Steele County however joins with the City of Owatonna in requesting adequate mitigation measures within the city. Steele County requests that those same mitigation measures be applied, and to the same extent, outside the limits of Owatonna, for the protection of rural residents as well as the citizens of Meriden and Havana.

Response

SEA has not recommended the construction of any bypasses for this proposed project. A more detailed narrative of the specific impacts of the proposed project on Steele County and Owatonna is found in Chapter 8 of this Final EIS. SEA's proposed mitigation measures are found in Chapter 12 of this Final EIS.

Factor: 0

Restatement 007712 1

Several commentors found the following omissions in the Draft EIS:
 the impact of the expansion on Winona, MN and the CP Rail Track.
 the communities along the I&M railroad were not included. The negative impact of this proposal will have the same negative effects on all the communities adjacent to the I&M rail lines. Page 3.2-32 of the draft document states, "Because it is reasonable that such movement of trains would occur and the citizens of and elected officials in Winona expressed concern for noise, air quality, transportation, and safety in their community due to this increase in rail traffic, the Section of Environmental Analysis determined it appropriate to consider these potential impact along the Canadian Pacific line in Winona". Noise level, however, is the only concern substantively analyzed within the Draft EIS the impact of the proposed project on the City of Goodview.

Response

SEA conducted an analysis based on currently available information provided and feels an equally substantial analysis was performed in regards to all areas of concern by the citizens of Winona. The potential environmental impacts imposed on Winona by the proposed project are discussed in the appropriate sections of the Draft EIS (Chapter 3.2). Impacts of the proposed DM&E expansion on Winona, MN are discussed in the appropriately corresponding portion if the DEIS (Section 3.2). Tables 3.2-13 and 3.2-14 illustrate the increased impacts due to noise at both 65dba and 70dba pertaining to all levels of rail operation (20 MNT, 50 MNT, and 100 MNT). The analysis regarding impacts to Winona, MN was separated due to the portion of the CP rail line in Winona (see pp. 3.2-32). SEA also conducted a full analysis regarding the impacts of the proposed project on the City of Goodview, as discussed in full detail in the appropriately corresponding portion of the DEIS (Section 3.2).

To analyze the potential impacts on the communities adjacent to the I&M rail line would require an evaluation of the amount of trains currently using the I&M rail line. This would have required DM&E to make an assessment of the impacts of the total rail traffic in relevance to another rail carrier. SEa determined that the I&M activities were outside of the scope of this proposed action.

11/15/2001

Similar
0

Factor:

Restatement 007728 1

The commentor finds it unacceptable that in the entire Draft EIS no mention is made of impacts that this project will have on Winona, MN. The commentor requests that the scope of the Board's study be expanded to include impacts on Winona and that a new Draft EIS that includes this information be opened to the public for comment.

Response

Impacts of the proposed DM&E expansion on Winona, MN were discussed in Section 3.2 of the Draft EIS. Tables 3.2-13 and 3.2-14 describe the anticipated increase in noise at both the 65dba and 70dba levels as they pertain to all levels of rail operation (20 MNT, 50 MNT, and 100 MNT). The analysis regarding impacts to Winona, MN was separated from the other towns in Winona County due to a portion of the CP rail line traversing Winona (see pp. 3.2-32).

Factor: 0

Restatement 004787 12

The commentor objects to the Mankato Alternative M-2 as a bypass route. The noise and vibration impact on Hillcrest properties will be substantial given its close proximity to the anticipated DM&E rail line. The commentor is especially troubled that the consequences on the health care business weren't addressed in the Draft EIS.

Response

SEA is recommending the Southern Alternative route around Mankato. A description of the alternatives and the basis for the recommendation is found in Chapter 7 - Mankato of this Final EIS. This chapter also considers the potential impacts to the Hillcrest Home. Impacts to this residential structure are not expected to be significant.

Factor: 0

Restatement 003809 25

The commentor disagrees with SEA's conclusion that the Action alternative for the upgrade portion of this project is preferable. The upgrade alone will create new and profound adverse impacts to air quality, groundwater, wetlands, cultural resources, business and farm owners, and nearby residents. Given that SEA acknowledges that the increased rail traffic associated with the upgrade would partially detract from the general safety of the upgrade line, the benefit of the upgrade in terms of safety would be marginal at best. Certainly these marginal safety benefits do not outweigh the substantial damage.

Response

SEA acknowledges the comment and refers the commentor to the additional analysis presented in this Final EIS. While the upgraded line will have additional traffic, SEA believes that operational improvements and safety measures at intersections will make the line safer. A discussion of these impacts and proposed mitigation measures can be found in Chapter 4 and 12, respectively, of this Final EIS.

Factor: 0

Restatement 007557 40

The commentor states the conditions that MN/DOT requests will allow the affected communities, state and Federal agencies to adequately address the potential impacts of the

PRB project with full knowledge, prior to receiving approval from the STB.

Response

SEA has considered a wide-variety of suggested conditions that should be placed on DM&E for this proposed project. Suggested conditions were received by citizens and agencies. Chapter 12 of this Final EIS provides SEA's proposed mitigation measures for the project and the conditions, including reference to the negotiated agreements, by which these measures can be imposed.

Factor:

0

Restatement 007754 8

The commentor states the draft EIS fails to mention the need for overpasses or the need for other mitigation measures to address the effects that the proposed DM&E coal train expansion project would have on the City of Winona. Under Federal Regulation, the STB must, include appropriate mitigation measures.

Response

Appropriate mitigation measures are included in Chapter 12 of this Final EIS. SEA considered the potential impact of train traffic to intersections and determined that the Winona area did not meet the criteria for an overpass.

Factor:

0

Restatement 007758 8

One commenter threatened to sue the Board in a class action lawsuit if DM&E' proposed project adversely affects private property. The commenter said the Board would have to fund replacement value for "home, my memories, and quality of life loss, and the complete disruption of my lifestyle," and mitigation would not be accepted. Another commenter said the poor quality of the Draft EIS could subject the Board to litigation.

Response

One of the most important goals of the environmental review process is to develop appropriate environmental mitigation to eliminate or minimize the effects of railroad construction proposals on affected communities. The Board also encourages railroads and affected communities to negotiate mutually acceptable agreements to resolve potential environmental issues because negotiated agreements often contain more far-reaching solutions than environmental mitigation the Board unilaterally could impose. (Here 50 of the 56 communities at issue negotiated agreements with the railroad, and SEA is recommending in the Final EIS that the Board impose a condition on any decision granting final approval to the PRB Expansion Project requiring DM&E to comply with the terms of the negotiated agreements.) Lastly, compensation for any taking of property as a result of this, or any other rail construction, is available in the event of an eminent domain or condemnation action.

Factor:

0

Restatement 007758 3

The commentor states the City of Brookings did not negotiate with property owners therefore no mitigation measures will be accepted.

Response

Impacts and proposed mitigation for the Brookings area are discussed in Chapter 6 of this Final EIS. As of this writing, no negotiated agreement exists between Brookings and the Applicant.

Topic: T19-Alternatives

SubTopic:

Factor: F01G-Alternatives - Rochester Bypass

13

Restatement 007542 73

Several commenters provided comments on the Draft EIS in consideration of bypass alternatives and the Board' jurisdiction to impose bypass conditions for the proposed project. The commenters made the following specific comments that the Board does not have the jurisdiction to require bypasses:

Because Board has no jurisdiction over the rehabilitation of DM&E' existing line, these bypasses are not alternatives to the proposed action, which is the construction of new rail line from DM&E' existing system to the PRB.

Even if the Board determines that 49 U.S.C 10901 expands its jurisdiction to impose conditions on the rehabilitation portion of the project, construction of a bypass would be a construction case in its own right and would require an application before the Board and consideration of the public convenience and necessity.

The Board does not have jurisdiction to require DM&E to file an application to construct bypasses as a condition of approval of the proposed project. Conditioning approval of the proposed DM&E expansion on the approval of such a bypass would prejudice the merits of a bypass construction application.

The Board does not have the authority to regulate rail traffic flows. By ordering the construction of any of these bypasses, the Board would be directing rail traffic operations onto certain rail lines. Therefore, even if the Board could order DM&E to construct a bypass, it could not direct DM&E to move coal over a bypass in contravention of the Staggers Rail Act, related Federal rail policy, and Board precedent.

Any Board order requiring construction of the bypasses would result in legal challenges to the Board' jurisdiction and constitutional issues regarding the lack of demonstrated need for property takes.

These bypasses in South Dakota are not reasonable mitigation for impacts of constructing new rail line in Wyoming and western South Dakota.

The bypass alternatives would merely transfer operating impacts to another area and result in a substantial increase in construction impacts.

Construction of bypasses does not address the serious safety issues on the existing route.

The bypasses would eliminate the benefit of improved service for existing shippers.

The cost estimates provided by the cities are unreasonably low and were not developed with any accountability for engineering and operational feasibility, safety, or cost overruns.

One commenter said the EIS should define the bypasses as extra-jurisdictional measures to mitigate indirect impacts of the proposed project. Several commenters noted that the proposed project is not feasible if it is conditioned on construction of bypasses and the length and complexity of legal challenges would in effect kill the project. For these reasons, the Board should approve the project without the bypass alternatives or deny the project in its entirety.

Response

SEA acknowledges the important and substantive comments on the Board's jurisdiction to impose bypasses as mitigation for the environmental impacts of the proposed project. SEA's evaluation of bypasses in the Draft and Final EIS examined and described the potential environmental impacts of the bypass alternatives. SEA is not recommending the community-proposed bypasses as the environmentally preferred alternatives in those communities. With this Final EIS, SEA presents the results of the evaluation and its recommendations to the Board for consideration in its final decision. SEA did not examine the Board's jurisdiction to impose bypasses, but provides these comments to the Board for consideration.

Factor: F02A-Analysis - Data Accuracy

8

Restatement

000234

8

Several commenters provided specific comments on the evaluation of the Hay Canyon Alternatives in the Draft EIS. One commenter said the Draft EIS underestimated the wetlands impacts of the WG Divide Alternative. The commenter added that, by inviting comments on the alternative, the Draft EIS indicated that the Board is still conducting scoping. 49 CFR 1502.14 (e) requires the Board to identify a preferred alternative.

Regarding the Draft EIS statement that the WG Divide Alternative is not likely to pose a significant impact to water resources, a commenter noted that although the route only crossed the Cheyenne River once, the entire route runs the length of the watershed. The commenter also asked how many times the Hay Canyon Alternatives crossed the Cheyenne River.

One commenter noted that Volume VIII-B discusses only the WG Divide Alternative. Since the Board has stated that there are no viable alternative routes between Smithwick and north of Cheyenne, this volume should include discussion of all alternatives, including the Hay Canyon and Oral Alternatives. The commenter also noted that the Draft EIS description and labeling of the Hay Canyon Alternatives was confusing. For example, on page 4-127 of Volume VIII-B, the Draft EIS figures (references Table 5-54) only show Alternatives B and C, and the WG Flat Route Segment, while in other volumes, the Board asks the public to comment on the Hay Canyon Alternatives, which include the Hay Canyon Segment, the WG Flat Segment, and the Oral Segment. The commenter added that the titles and figures are not consistent. In Section 4.6.2.5.3, the Oral Segment is listed as 30 acres of right-of-way. In this section it is called Alternative B and requires 229.3 acres. The WG Divide Route is called variously the "Divide Route," the "WG Flat Alternative Alignment," the "WG Flat Route Variation," the WG Divide Alternative," or the "WG Flat Segment."

One commenter noted that Table 6.4 is an overview of the Hay Canyon Alternatives, not the Spring Creek Alternatives as stated on page 6-26 (Volume IV).

Response

The Draft EIS provided a comparative evaluation of the Hay Canyon alternatives. SEA and cooperating agencies requested public comments on the alternatives comparison to ensure that the evaluation was complete and accurate. Based on this evaluation and additional information described in Chapter 3, SEA determined in the Draft EIS that the WG Divide Alternative is the environmentally preferred alternative, if the Board approves the proposed project.

Volume VIII-B (Appendix L) includes a discussion and evaluation of the WG Divide, Oral Segment, and Hay Canyon Alternatives. SEA described the crossings of the Cheyenne River and the potential impact to water resources in Sections 4.4.7 and 4.6.3 of the Draft EIS. SEA refers to the WG Divide Alternative in the Draft EIS, but other agencies used different terminology in Volume VIII-B. SEA interpreted the descriptions of impacts prepared by other agencies to ensure that the Draft EIS fully described the potential impacts for the WG Divide Alternative.

Errors in the Draft EIS and corrections to them are addressed in Appendix A.

Factor: F01L-Alternatives - No-action Alternative

4

Restatement 007542 68

One commenter said that Alternative M-3 presents the least impact of the Mankato alternatives. The commenter stated that the Final EIS should consider the No-Action Alternative for the Mankato area. DM&E believes that operation over the UP trackage rights is a feasible alternative that warrants consideration.

Response

As described in Chapter 7 of this Final EIS, SEA determined that the Southern Route Alternative (M-2) is the environmentally preferred alternative for the project in the Mankato area if the Board approves the proposed project. If DM&E reaches a trackage agreement with UP, M-3 would be a feasible alternative.

Factor: F01G-Alternatives - Rochester Bypass

54

Restatement 007561 7

Several commenters provided comments on the development and evaluation of the Rochester Bypass Alternative. One commenter said the Draft EIS did not examine reasonable and feasible options for bypassing Rochester. The Draft EIS evaluated a new Rochester Bypass Alternative, which is incorrectly referred to as mitigation. The Draft EIS did not examine alternate routes to bypass Rochester. In accordance with CEQ requirements, the EIS should identify all alternatives to the route through Rochester, screen them to determine which are reasonable and feasible, and compare the impacts of those that are found to be reasonable and feasible. These alternatives should include routes over alternate carriers between the extension routes and Rochester as well as barging and trucking, or combinations thereof. The Board' failure to consider several route alternatives does not comply with requirements to take a "hard look" at alternatives.

Several commenters said the Board should deny efforts by the City of Rochester and others to submit further modifications to the Rochester Bypass Alternative. Late changes to the proposals prejudices those parties who have spent time and resources commenting on the proposals as presented in the Draft EIS.

One commenter said the bypass route identified by the City of Rochester was designed to avoid future industrial and residential development in the city and to avoid crossing I-90 and affecting other communities to the south of I-90. The consequence of these criteria is that the route is located in natural resource protection areas and on farmland. The City subsequently revised the route (June 10, 1999) to avoid wetlands in Rock Dell and High Forest townships and a planned rerouting of Highway 30. Several commenters expressed concern that the communities and residents affected by the Rochester Bypass Alternative have not had access to the City of Rochester' analysis of the bypass or negotiations with DM&E.

Response

During public scoping for the project, the Board solicited comments from the affected public about potential impacts of the proposed DM&E project and suggested alternative routes to bypass communities. The City of Rochester submitted a bypass alternative for the Board's evaluation. The City's proposal was the result of the City's evaluation of the best option for the proposed rail traffic to bypass the City of Rochester. SEA also evaluated alternatives that would use existing rail corridors or rights-of-way as alternatives for the new construction portions of the project. SEA determined that the alternatives operating over rail lines owned by other rail carriers would not accomplish the project purpose.

As described in Chapter 9 of the Final EIS, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project.

Factor: F01M-Alternatives - Other

Restatement 007542 71

Several commenters provided comments on the route alternatives for the Owatonna area. One commenter said the Board should approve the O-4 Alternative in Owatonna. This alternative will provide the competitive incentive for DM&E and I&M Rail Link to negotiate an agreement to use the existing rail link in Owatonna, which is DM&E' and the City of Owatonna' preferred alternative. Without approval of the O-4 Alternative, the parties will not have the incentive to reach a fair agreement to use existing rail lines.

Another commenter stated that Alternative O-3 appears preferable to Alternative O-5 based on fewer habitat impacts identified in the Draft EIS. Other commenters supported the Owatonna bypass proposed and withdrawn by the City of Owatonna.

Response

As described in Chapter 8, SEA completed a thorough evaluation of the alternative routes through the Owatonna area. Based on this evaluation, SEA has determined that Alternative O-4 is the environmentally preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the preferred alternative, if it were a feasible alternative. The alternative is not feasible because an agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative. Chapter 8 includes a complete discussion of the Owatonna alternatives and SEA's rationale for its determination.

Factor: F01E-Alternatives - Pierre Bypass

13

Restatement 007542 73

Several commenters provided comments on the Draft EIS in consideration of bypass alternatives and the Board' jurisdiction to impose bypass conditions for the proposed project. The commenters made the following specific comments that the Board does not have the jurisdiction to require bypasses:

Because Board has no jurisdiction over the rehabilitation of DM&E' existing line, these bypasses are not alternatives to the proposed action, which is the construction of new rail line from DM&E' existing system to the PRB.

Even if the Board determines that 49 U.S.C 10901 expands its jurisdiction to impose conditions on the rehabilitation portion of the project, construction of a bypass would be a construction case in its own right and would require an application before the Board and consideration of the public convenience and necessity.

The Board does not have jurisdiction to require DM&E to file an application to construct bypasses as a condition of approval of the proposed project. Conditioning approval of the proposed DM&E expansion on the approval of such a bypass would prejudice the merits of a bypass construction application.

The Board does not have the authority to regulate rail traffic flows. By ordering the construction of any of these bypasses, the Board would be directing rail traffic operations onto certain rail lines. Therefore, even if the Board could order DM&E to construct a bypass, it could not direct DM&E to move coal over a bypass in contravention of the Staggers Rail Act, related Federal rail policy, and Board precedent.

Any Board order requiring construction of the bypasses would result in legal challenges to the Board' jurisdiction and constitutional issues regarding the lack of demonstrated need for property takes.

These bypasses in South Dakota are not reasonable mitigation for impacts of constructing new rail line in Wyoming and western South Dakota.

The bypass alternatives would merely transfer operating impacts to another area and result in a substantial increase in construction impacts.

Construction of bypasses does not address the serious safety issues on the existing route.

The bypasses would eliminate the benefit of improved service for existing shippers.

The cost estimates provided by the cities are unreasonably low and were not developed with any accountability for engineering and operational feasibility, safety, or cost overruns.

One commenter said the EIS should define the bypasses as extra-jurisdictional measures to mitigate indirect impacts of the proposed project. Several commenters noted that the proposed project is not feasible if it is conditioned on construction of bypasses and the length and complexity of legal challenges would in effect kill the project. For these reasons, the Board should approve the project without the bypass alternatives or deny the project in its entirety.

Response

SEA acknowledges the important and substantive comments on the Board's jurisdiction to impose bypasses as mitigation for the environmental impacts of the proposed project. SEA's evaluation of bypasses in the Draft and Final EIS examined and described the potential environmental impacts of the bypass alternatives. SEA is not recommending the community-proposed bypasses as the environmentally preferred alternatives in those communities. With this Final EIS, SEA presents the results of the evaluation and its recommendations to the Board for consideration in its final decision. SEA did not examine the Board's jurisdiction to impose bypasses, but provides these comments to the Board for consideration.

Factor: F01F-Alternatives - Brookings Bypass

Restatement 007542 73

Several commenters provided comments on the Draft EIS in consideration of bypass alternatives and the Board' jurisdiction to impose bypass conditions for the proposed project. The commenters made the following specific comments that the Board does not have the jurisdiction to require bypasses:

Because Board has no jurisdiction over the rehabilitation of DM&E' existing line, these bypasses are not alternatives to the proposed action, which is the construction of new rail line from DM&E' existing system to the PRB.

Even if the Board determines that 49 U.S.C 10901 expands its jurisdiction to impose conditions on the rehabilitation portion of the project, construction of a bypass would be a construction case in its own right and would require an application before the Board and consideration of the public convenience and necessity.

The Board does not have jurisdiction to require DM&E to file an application to construct bypasses as a condition of approval of the proposed project. Conditioning approval of the proposed DM&E expansion on the approval of such a bypass would prejudice the merits of a bypass construction application.

The Board does not have the authority to regulate rail traffic flows. By ordering the construction of any of these bypasses, the Board would be directing rail traffic operations onto certain rail lines. Therefore, even if the Board could order DM&E to construct a bypass, it could not direct DM&E to move coal over a bypass in contravention of the Staggers Rail Act, related Federal rail policy, and Board precedent.

Any Board order requiring construction of the bypasses would result in legal challenges to the Board' jurisdiction and constitutional issues regarding the lack of demonstrated need for property takes.

These bypasses in South Dakota are not reasonable mitigation for impacts of constructing new rail line in Wyoming and western South Dakota.

The bypass alternatives would merely transfer operating impacts to another area and result in a substantial increase in construction impacts.

Construction of bypasses does not address the serious safety issues on the existing route.

The bypasses would eliminate the benefit of improved service for existing shippers.

The cost estimates provided by the cities are unreasonably low and were not developed with any accountability for engineering and operational feasibility, safety, or cost overruns.

One commenter said the EIS should define the bypasses as extra-jurisdictional measures to mitigate indirect impacts of the proposed project. Several commenters noted that the proposed project is not feasible if it is conditioned on construction of bypasses and the length and complexity of legal challenges would in effect kill the project. For these reasons, the Board should approve the project without the bypass alternatives or deny the project in its entirety.

Response

SEA acknowledges the important and substantive comments on the Board's jurisdiction to impose bypasses as mitigation for the environmental impacts of the proposed project. SEA's evaluation of bypasses in the Draft and Final EIS examined and described the potential environmental impacts of the bypass alternatives. SEA is not recommending the community-proposed bypasses as the environmentally preferred alternatives in those communities. With this Final EIS, SEA presents the results of the evaluation and its recommendations to the Board for consideration in its final decision. SEA did not examine the Board's jurisdiction to impose bypasses, but provides these comments to the Board for consideration.

Factor: F03D-Process - STB policy, process

Restatement 002331 6

Several commenters stated concerns about the evaluation of the Brookings Bypass and comparison with the existing route. One commenter said the shorter Brookings bypass proposal by Railco has similar problems as other bypass proposals, such as safety and farmland access. Commenters said that the Board should scrutinize the cost comparison between the existing route and the Brookings Bypass Alternative. Even with the Brookings bypass, the existing route would have to be upgraded to serve existing shippers. The bypass would result in higher operating costs due to the longer route. In considering the relative costs, commenters said that the Board should include the cost of adequate mitigation for each option and that the City's cost comparisons do not compare the options equally. The Board should focus on making the existing route as safe as possible. One commenter said that train congestion relief in downtown Brookings is not a reason for constructing a bypass.

Response

SEA reviewed and evaluated the Brookings bypass alternative and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. Chapter 6 includes a description of SEA's evaluation and the rationale for its determination of the environmentally preferred alternative.

Chapter 12 describes SEA's recommended mitigation for the proposed project, if approved by the Board.

Factor: F02C-Analysis - Methods

6

Restatement 007639 6

Several commenters provided statements on the identification of the preferred alternative in the Draft EIS. One commenter said the Draft EIS and DM&E' permit application to the Army Corps of Engineers were not clear whether Alternative B or Alternative C is DM&E' preferred alternative. The location and size of proposed sidings and yards varies substantially for the two alternatives.

One commenter said that the term "environmentally preferable alternative" has been misconstrued throughout the Draft EIS and identification of any alternative other than the No-Action Alternative as environmentally preferable is unsupported. According to CEQ guidelines, the "environmentally preferable alternative" is the alternative that causes the least damage to the biological and physical environment. Safety and economic viability are not factors that should be considered when determining the environmentally preferable alternative. There are substantial adverse impacts from all of the action alternatives, so the environmentally preferable alternative can only be the No-Action Alternative. The commenter said the Board should revise the EIS to more clearly distinguish the environmentally preferable alternative from an action alternative that may be the Board' preferred alternative.

Two commenters clarified the Department of Interior agencies' position on the preferred alternative. The Executive Summary of the Draft EIS incorrectly indicated that Alternative C is the preferred alternative for the U.S. Forest Service. Alternative A, No-Action, is the preferred alternative for the Forest Service and the Bureau of Reclamation. If the Board selects an action alternative, the Forest Service' preferred alternative is Alternative C. The Bureau of Reclamation prefers routes that avoid crossing the Angostura Irrigation District and opposes the WG Divide option. In the event that the Board selects Alternative C, with the WG Divide option, the Bureau of Reclamation has entered into discussions with DM&E to ensure that DM&E fully mitigates potential impacts associated with that route.

Response

As described in the Draft EIS, the Applicant's preferred alternative is Alternative C. SEA believes that it accurately characterized the Forest Service's preferred alternative in the Draft EIS; however, SEA acknowledges the clarifications from the Department of Interior regarding the agencies' positions on the environmentally preferable alternative. In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Errors in the Draft EIS, and corrections to them, are addressed in Appendix A.

Factor: F02E-Analysis - Results

7

Restatement 008066 45

The description of the options for the Middle East Staging and Marshaling Yard are inadequate. The Draft EIS did not provide detailed descriptions of plans, activities, and materials used or stored at the yard. The Draft EIS did not account for the following information:

Option A would place the yard entirely within the statutory boundaries of Minneopa State Park. Although the state has not acquired all of the land for the park, the rail yard would be an incompatible use. Much of the area north of the tracks, the only area for the yard, is wetlands, with intermittent streams connecting to the Minnesota River. There are prairie remnants of fair to good quality in Sections 2 and 3. There is good cover for pheasant, deer, wild turkeys, and raptors. Option B is in an area with a perennial stream, subject

to flooding (the Draft EIS said an intermittent stream). There are state-listed endangered rock-pocketbook and warty back mussels and state-listed threatened mucket nearby in the river.

There is no analysis of impacts for Option D.

Another commenter stated that, according to the Draft EIS, Option A would have less impact on wetlands and DM&E has identified Option B as its preferred option. To comply with the Clean Water Act regarding wetlands, DM&E must provide additional information as to why Option A is not practicable or that Option B is less damaging to the aquatic ecosystem. The Draft EIS indicated that Option B would affect 10.4 more acres of wetland and 109.4 more acres of prime farmland than Option A. Option A would affect 116.4 acres of land identified for acquisition for Minneopa State Park.

Regarding the comparison of Options A and B for the Middle East Staging and Marshaling Yard, one commenter stated that Board should select the option that minimizes impacts to private property.

The commenter stated that if the project was for the public good, DM&E should use public land wherever possible. Another commenter said that the staging area near New Ulm should be located east of the proposed area, between Shag Road and Courtland, MN. Another commenter said that the Board should deny the location of the Middle East Staging Yard. If the Board approves the yard, DM&E should provide concessions or remuneration to local residents for the disruption.

Response

Chapter 4 of the Final EIS includes additional discussion and evaluation of the Middle East Staging and Marshaling Yard and alternative locations. Based on this evaluation, SEA has determined that Option B is the environmentally preferred alternative, if the Board approves the project. Chapter 4 of the Final EIS includes discussion of SEA evaluation of potential impacts for each option, including the potential impacts to wetlands.

Factor: F02E-Analysis - Results 0

Restatement 007676 5

One commenter said the Board should evaluate the possibility of a future purchase of DM&E by one of the existing carriers that serve the PRB. If DM&E were purchased, the competition benefits of the proposed project would not be realized and environmental and economic disruption would occur.

Response

At this time, SEA considers that any future purchase of DM&E is speculative. There is no evidence available that such an action is reasonably foreseeable. However, if another railroad proposed to purchase DM&E at some future time, such an action would be subject to review and approval by the Board as a separate proceeding, including a consideration of the competitive merits. If one of the carriers that currently serve the Powder River Basin proposed to purchase DM&E, competitive service from two rail carriers would remain and the competitive benefits of DM&E's shorter, more efficient route would still exist.

Factor: F01M-Alternatives - Other 0

Restatement 007676 5

One commenter said the Board should evaluate the possibility of a future purchase of DM&E by one of the existing carriers that serve the PRB. If DM&E were purchased, the competition benefits of the proposed project would not be realized and environmental and economic disruption would occur.

Response

At this time, SEA considers that any future purchase of DM&E is speculative. There is no evidence available that such an action is reasonably foreseeable. However, if another railroad proposed to purchase DM&E at some future time, such an action would be subject to review and approval by the Board as a separate proceeding, including a consideration of the competitive merits. If one of the carriers that currently serve the Powder River Basin proposed to purchase DM&E, competitive service from two rail carriers would remain and the competitive benefits of DM&E's shorter, more efficient route would still exist.

Factor: F01F-Alternatives - Brookings Bypass

2

Restatement 007768 5

One commenter stated that the Board should not consider community survey results from Brookings. Some survey results are outdated and based on inaccurate information provided to the public. If the Board is going to rely on surveys, the Board should use a new survey designed jointly by opponents and proponents of a bypass.

Response

SEA entered community surveys into the environmental record in this proceeding, but based its evaluation of the potential environmental impacts of the alternatives routes through or around Brookings on a variety of sources, including site visits. With this Final EIS, SEA is providing all of the available information, including surveys, petitions, and comments on these surveys, to the Board for review and consideration in its final decision.

Factor: F01M-Alternatives - Other

13

Restatement 007676 4

Several commenters suggested that the Board should evaluate various alternatives that involve use of existing rail lines owned and operated by other rail carriers, such as UP or BNSF. Specific suggested alternatives included the following:

Modified Alternative A. This alternative would allow DM&E access to the PRB over existing BNSF lines. One commenter noted that this alternative would provide DM&E with additional revenues from coal transport, cause few environmental impacts, and increase competition for coal shippers.

One commenter suggested evaluating the use of the existing BNSF line from Edgemont, SD to the PRB. Another commenter noted that DM&E could connect to BNSF at Wolsey, SD to gain access to the western markets.

One-way Coal Traffic Loop. This alternative would involve a loop of one-way traffic flow using existing UP and BNSF rail lines for the loaded coal cars and the expanded DM&E system for returning the unloaded cars to the PRB. According to the commenter, such a system would increase the coal haul capacity by 300 million tons and require less extensive upgrades and less new construction on the DM&E system. This approach would allow for less stringent engineering standards (2-degree curves and 2 percent grade), reduce environmental impacts, and cost approximately half the proposed construction costs. Although this alternative would result in increased rail traffic on the DM&E line above the traffic levels proposed and would likely reduce or eliminate service to existing shippers, nevertheless, it is a reasonably foreseeable alternative that the Board should examine in the Draft EIS.

Other commenters generally suggested the joint use of UP, BNSF, and DM&E rail lines and trackage rights.

Response

The Board considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. The Draft EIS described the evaluation of several alternatives for routing DM&E train traffic from the existing DM&E rail system over new rail lines that would be constructed in the rail rights-of-way owned by BNSF or UP. The Draft EIS described the evaluation of these alternatives in Chapter 2. Chapter 2 of the Draft EIS described SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). SEA did not consider alternatives where DM&E would operate its trains over rail lines owned by other railroads because the Board does not have the authority to order DM&E to operate over the rail lines of another carrier. Implementation of this alternative would require a negotiated trackage rights agreement between DM&E and any other railroad over which DM&E wanted to operate. Because DM&E has not proposed such an action or entered into negotiations with BNSF or UP, SEA does not consider the alternatives that would route traffic over other railroads' rail lines to be reasonable or feasible alternatives warranting further environmental review.

Factor: F01H-Alternatives - Yards

14

Restatement

007660

39

Several commenters stated concerns about the public scoping process and the objectivity of the Board' review of alternatives. Several Native American interests stated that Native American Tribes were not invited to identify concerns about the selection of alternatives for public review or the location of staging and marshalling yards during the scoping process. The commenters said that the proposed alternatives are incomplete because the Board did not complete the appropriate tribal consultation process under 40 CFR 1502.25. A letter to the Tribal Council or Chairman does not constitute sufficient government-to-government consultation.

Other commenters said that the routes and alternatives should have been established during scoping. Draft EIS statements that the Board will determine the final route in the Final EIS are contrary to the public review objectives of NEPA. Another commenter said that the Board appears to be transferring the agency decisionmaking burden to the public on the selection of alternatives and options for Alternative C, Rochester and Brookings bypasses, which yards to construct, and the selection of mitigation. Another commenter was concerned that statements regarding alternatives that would bypass communities will not meet DM&E' goals, demonstrating that the Board' analysis of alternatives is not objective.

Response

The Board completed a thorough alternatives analysis in compliance with NEPA requirements. During public scoping, the Board sought comments from the public on the alternatives and environmental issues to be addressed in the environmental review. The Board received more than 5,000 comments during scoping, many of which suggested specific alternatives for the Board to evaluate. The Board and the cooperating agencies presented their evaluation of the alternatives in the Draft EIS, seeking public comments on the evaluation.

The Board will consider all of the available information in making its final decision on the DM&E project, including the selection of alternatives and the mitigation requirements.

Regarding the comments on Native American consultation, the Board conducted extensive consultation with Native American Tribes during scoping and preparation of the Draft EIS as well as during and after the public comment period on the Draft EIS. The consultation was fully compliant with 40 CFR 1502.25 and included numerous meetings with tribal interests. The outreach activities to Native American Tribes are discussed more fully in Chapter 11 of this Final EIS and in the Environmental Justice Appendix of the Draft EIS (Appendix D).

11/15/2001

Similar
0

Factor: F02D-Analysis - Mitigation

Restatement 007547 30

One commenter was concerned about mitigation to protect groundwater resources from pollutants.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. The technical appendix of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on groundwater resources from the proposed project.

Factor: F01I-Alternatives - Sidings

0

Restatement 007564 30

One commenter said the Draft EIS did not describe the potential impacts of the alternative siding locations in Olmsted County. The Draft EIS also did not describe how these potential siding locations could change with approval of the bypass alternatives (R-3 or R-4). Potential impacts from the sidings could include increased noise and vibration from simultaneous train operation and traffic delay if train speeds cannot be maintained on the sidings. A commenter said the Final EIS should provide clarification as to the criteria for locating the sidings. These criteria should include consideration of no-build zones in areas near sidings. It does not appear that DM&E applied the criteria described in the Draft EIS (sidings of 3 to 7 miles in length and spacing of 12 to 25 miles) in eastern Minnesota.

Response

As described in Chapter 9, SEA's evaluation of route alternatives through the Rochester area determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the proposed project. In Appendix I of the Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.

It should be noted that although trains operating on sidings may potentially increase noise levels, this operation does not necessarily take place at the same time as trains operating on the main line. As the timing of siding operation is impossible to determine, it is inappropriate for SEA to add siding operation noise to mainland operating noise in its analysis. Siding noise cannot necessarily be considered additive.

Factor: F03C-Process - Public Outreach

27

Restatement 007674 24

Several commenters expressed concerns about the adequacy of the evaluation of Alternative D, including the comparison of this alternative with Alternative C. Commenters said that DM&E and the Board should develop Alternative D to the same level of detail as Alternatives B and C to allow for an effective, accurate comparison of the alternatives.

Several commenters noted that the Draft EIS Executive Summary (page ES-38) indicates that Alternative D was eliminated from further consideration, but Chapter 2 (page 2-43) says that it was retained for detailed analysis.

One commenter provided specific comments on the Draft EIS evaluation of Alternative D. The commenter said the Board' analysis and elimination of Alternative D is based on information from DM&E in a letter dated June 9, 1999 and much of this information is inaccurate. The commenter stated that Board should conduct an independent, accurate analysis and comparison for Alternative D. The comments included the following:

DM&E' terrain and altitude difference on the existing line between Rapid City and Smithwick is inaccurate. The terrain on the existing route is better than on Alternative C. The commenter stated that Alternative D-2 was rejected inappropriately based solely on distance, not considering the grade.

DM&E' cut and fill estimates are not consistent for each alternative. The Draft EIS did not support general claims that construction on Alternative C would not require extensive cut and fill.

For the 102.1 miles of Alternative D would require construction on new right-of-way, the EIS should include a more extensive discussion of the potential impacts to landowners, landowner rights, potential use of eminent domain, landowner opinion surveys regarding eminent domain, and a recent South Dakota law limiting the use of eminent domain.

The Draft EIS was inaccurate in the statement that Alternative D is substantially longer and may not meet one of the project goals, which is to efficiently deliver low-sulfur coal from the PRB. Alternative D is 70 miles longer (and would be less with a Southeast Connector bypass of Rapid City), which is not a substantial difference in a 1,000-mile project. Also, if the Board does not select Alternative D, the purpose of upgrading the existing line would not be accomplished.

If the Draft EIS acknowledged that construction in existing rail corridors is generally preferable to new construction and bypasses would not meet the purpose of improving service to existing shippers, how did the Board select Alternative C as preferred to Alternative D? Alternative C will not improve service to existing shippers along the existing route through Rapid City. The Board should identify and quantify the shippers in the Rapid City/Black Hills area that would lose service. The Board should be consistent about not recommending bypasses, including the Rapid City bypass (Alternative C).

Response

SEA included Alternative D in the detailed evaluation of alternatives. SEA also included a comparative evaluation of Alternative D with Alternatives B and C in the Draft EIS. However, SEA eliminated some variations on Alternative D from the detailed evaluation. Chapter 2 of the Draft EIS described this screening process. In response to public comments, SEA considered a Modified Alternative D, including an evaluation of the potential impacts of the necessary construction to make the existing route suitable for coal trains. Based on this evaluation, SEA determined that this Modified Alternative D is not a reasonable alternative to the proposed project due to the substantial environmental impacts. Chapter 3 includes the discussion of SEA's analysis of Modified Alternative D.

Issues relating to property acquisition for rail rights-of-way and eminent domain are not within the Board's jurisdiction, but rather, are handled under the appropriate state law.

In finding that Alternative C appeared to be the "least environmentally intrusive" alternative in the Draft EIS, SEA compared potential environmental impacts associated with the full range of feasible alternatives under consideration. Alternative D would minimize environmental impacts by relying on existing transportation corridors, but would be substantially longer when compared to Alternative C.

Factor: F01E-Alternatives - Pierre Bypass

21

Restatement

007536

20

Several commenters stated that the Board should reexamine a bypass for Pierre, SD and that the Board dismissed the proposed Pierre bypass with only a cursory review. The commenters said that the Board should take a "fresh look" at the Pierre bypass proposal.

Similar

The commenters stated that Board erred when it did not accept the Pierre bypass proposal. The Draft EIS analysis and screening of the Pierre bypass was inadequate. Commenters stated that, in a short paragraph, the Draft EIS dismissed the Pierre bypass as unreasonable because it would have environmental and engineering constraints, require a new bridge, cuts and fills, and potentially affect cultural resources. This cursory review is not consistent with NEPA guidance that agencies take a "hard look" at alternatives. SEA based its conclusion, in part, on the potential impacts of a new bridge on navigation. The depth of the river at the crossing location is such that the only navigation at that point in the last 60 years has been pleasure craft. The Draft EIS did not provide any evidence of the presence of important cultural resources on the Pierre bypass route. The Draft EIS did not support claims that the Pierre bypass is infeasible because it has 'ignificant engineering and environmental constraints."

SEA did not apply its criteria for accepting bypass alternatives consistently when considering bypasses at Pierre, Brookings, and Rochester. SEA concluded that none of the substantial impacts of the Brookings and Rochester bypasses would make those alternatives infeasible or unreasonable. The Pierre bypass proposal is shorter and more efficient than the existing route. The Rochester Bypass Alternative is 10.8 miles longer than the existing route. The Board should take another look at the proposed Pierre bypass and issue a supplemental environmental review

One commenter said that DM&E offered up to \$40 million for construction of the bypass and the City of Pierre is seeking other sources of funding. Another commenter said that the EIS should evaluate the impacts to the potential restriction of movement of state employees between offices on either side of the track in Pierre.

Commenters suggested that the Board should select a route that does not go through Pierre, SD and that the Board should condition approval of the DM&E proposal on construction of the Pierre bypass, funded jointly by DM&E and the City.

Response

In response to the public comments regarding the Pierre Bypass, SEA completed an evaluation of the Pierre Bypass Route at the same detail as the evaluation of bypass alternatives for other communities. As described in Chapter 5, SEA determined that the existing route through Pierre, with appropriate mitigation, is the preferred alternative, if the Board approves the proposed project.

Factor: F01M-Alternatives - Other

Restatement

007765

23

Several commenters suggested alternatives for routing train traffic through or around Brookings. One commenter said the City of Brookings should examine an alternative bypass location that routes through the undeveloped portions of the industrial park and through state land on the south side of Highway 14. This route would maximize the use of public and state land, which is the City's stated goal. Another commenter said the Board should evaluate an alternative of depressing the rail line between Medary Avenue and a point east of 22nd Avenue. Depressing the tracks 10 to 15 feet would increase safety, improve the railroad grade, and reduce noise. If necessary, DM&E could purchase some homes along the line to create sufficient space for berms.

Response

SEA evaluated proposed bypass alternatives submitted by communities during the time period requested by the Board. Each community evaluated bypass options and submitted the option they believed would be the best alternative for consideration.

Factor: F03B-Process - NEPA Compliance

Restatement 007566 2

Several commenters provided general comments on the evaluation of bypasses. One commenter said the Board should be stating preferences for bypass alternatives, rather than seeking preferences from the public.

Another commenter said the proposed Rochester and Brookings bypasses have substantial impacts to the environment, including farms, wetlands, and streams.

One commenter said the Draft EIS was not clear on who would pay for the bypasses. Another commenter said the cost of bypasses should be borne by the community, not DM&E. Another commenter stated that the costs of the bypass alternatives are unreasonable and unwarranted and that the cities' estimates for the cost of the bypasses are unrealistically low. The commenter also stated that even if a city agreed to pay 100 percent of the cost of a bypass, the bypass alternatives are so fraught with legal and other problems that they should be rejected on their own lack of merit.

One commenter asked if the Board conducted any analysis of the Lower Brule Reservation and a bypass in that area.

Response

SEA provided a thorough evaluation of bypass alternatives, including a comparison of environmental impacts of each bypass with those associated with the rehabilitation of the existing route, for public review and comment. As described in Chapters 5 (Pierre), 6 (Brookings), 7 (Mankato), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts. As a result, SEA is not recommending potential cost sharing arrangements for constructing bypasses. Further discussion of SEA's consideration of bypasses is in Chapters 5 through 9.

Factor: F02E-Analysis - Results

Restatement 007700 2

Several commenters provided general comments on Alternative C. One commenter stated that the Draft EIS identified Alternative C as the preferred alternative and any refuting information supporting other alternatives was downplayed as unimportant.

Another commenter said the Alternative C realignment of the existing corridor to address operational problems at Wall, SD still presents substantial problems caused by substantial earthworks requirements, unstable shale, and badlands areas. From an engineering and environmental perspective, it would be preferable to avoid the Cheyenne River Valley entirely. Alternatives B and C do not provide engineering benefits over the existing route from Wasta to Smithwick, SD, and these alternatives result in environmental impacts in the Cheyenne River Valley.

Response

SEA conducted a thorough and independent evaluation of the alternative routes for the new construction portion of the project. Based on the analysis of alternatives described in the Draft EIS and the additional information provided in the Final EIS in response to public comments, SEA determined that Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative, if the Board approves the proposed project.

DM&E proposed the Alternative C realignment at Wall, SD to address operational constraints for coal trains at that location. SEA conducted an environmental review of that realignment as part of its evaluation of Alternatives B and C in the Draft EIS and acknowledged the impacts discussed by the commenter. SEA determined that both

Alternatives Band C provide engineering and operational benefits and fewer environmental impacts compared to the existing route from Wasta to Smithwick. SEA's discussion of the Modified Alternative D in Chapter 3 of this Final EIS provides further information and discussion of this comparison.

Factor: F03B-Process - NEPA Compliance

16

Restatement 007554 145

Several commenters stated that the EIS should include a more detailed, descriptive comparison of environmental impacts for each alternative, including estimates of the magnitude of impact. More detailed comparisons would account for the unique characteristics of each community and ranch, allow the public to provide meaningful comments on the relative impacts, and assist the agencies in identifying which alternative is the least damaging to the environment, particularly for alternatives through and around Mankato, Owatonna, and Rochester, MN. This comparison of alternatives should include the "net" effects to the environment after the application of mitigation and compare the costs and impacts of each alternative to the costs and impacts of the No-Action Alternative. For wetlands impacts, the comparison should be consistent with the Clean Water Act Section 404 (b)(1) and consider all practicable alternatives. Specifically, the EIS should provide additional comparative information for the following:

Potential impacts to wetlands and waters of the United States.

Estimated impacts from stream bank modification and channelization, changing hydrology, vegetation removal, erosion, increased sedimentation, degraded water quality, potential loss of habitat for some species, loss of cultural resources, and cut and fill activities.

Amount of cut and fill required for each alternative.

Comparative cost for each alternative, including the cost of rehabilitation.

Response

The Draft EIS provided a comparative analysis of environmental impacts for each alternative. The Draft EIS described these impacts for each alternative as a whole, but did not provide a comparison of impacts for each community. This Final EIS provides further analysis of the alternatives, particularly the bypass alternatives, to address specific public comments and concerns. SEA has included discussion of the "net" environmental impacts with mitigation in each of the Final EIS chapters describing environmental impacts (Chapters 3 through 9). The Chapter 12 includes a discussion of SEA's conclusions regarding the potential impacts and mitigation. The Final EIS includes a discussion of the total impacts to wetlands and waterways in Chapters 3 and 4. The amount of cut and fill for each alternative is described in the relevant chapters (Chapters 3 through 9).

Factor: F03C-Process - Public Outreach

0

Restatement 007566 16

Several commenters provided general comments on the description of the proposed action. One commenter stated that the Draft EIS indicated that the final design of the rail line construction and reconstruction is not complete. The EIS should describe a complete business plan, transportation routes, and applicable mitigation to fully evaluate the impacts. Another commenter said there is no explanation of the expected duration of coal hauling from the PRB.

Response

DM&E provided a description of its proposed project in its application to the Board. The Draft EIS evaluated the potential environmental impacts of the proposed project and alternatives. With this Final EIS, SEA describes the recommended mitigation for consideration in the Board's final decision on the project. If the Board approves the project, DM&E would prepare the final engineering design and complete all required permits for the project. The coal hauling would continue as long as DM&E maintained contracts to haul coal from the Powder River Basin.

11/15/2001

Similar
0

Factor: F01G-Alternatives - Rochester Bypass

Restatement 007554 183

One commenter was concerned about the safety at potentially blocked crossings.

Response

SEA recognizes the concerns for highway and rail safety in Rochester and Olmsted County. Proposed mitigation for the proposed project includes the installation, by DM&E, of two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at an other mutually acceptable location. The Applicant will negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities and the City of Rochester on the design, location, and funding of these grade separations.

DM&E will complete the installation of one grade separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. They will complete installation of a second grade separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year. These grade separated crossings should be designed and located to facilitate the movement of emergency vehicles to and from medical facilities providing emergency services in Rochester, including St. Mary's Hospital and Methodist Hospital.

Factor: F03B-Process - NEPA Compliance

0

Restatement 007554 133

One commenter said that the Draft EIS did not include any analysis of the environmental impacts of the operations at or alternate locations for the proposed maintenance facility in Huron.

Response

Chapter 4 of the Draft EIS included a discussion of the potential environmental impacts of the Huron maintenance facility. As described in Section 2.2.7 of the Draft EIS, the location of the rail yards for each alternative are determined primarily by operational considerations. Because of the different lengths of each of the Alternatives, the Huron (Central or Middle) Yard would be in a different location for each alternative. SEA's evaluation of the alternative locations is described in Section 4.10 in the Draft EIS.

Factor: F01I-Alternatives - Sidings

6

Restatement 007625 14

One commenter provided specific comments on the potential environmental impacts of several sidings in Minnesota.

Minneopa State Park Siding. The Draft EIS did not adequately evaluate the proposed siding at Minneopa State Park. The retaining wall may not be feasible due to seeps and springs.

The Draft EIS did not evaluate the proposed Minnesota River channel modifications. The effort necessary to stabilize soils at the western end of the siding could affect plant species in the vicinity. The siding should be relocated to another area. If the siding is built at this location, it should be built south (up-slope) of the tracks on the eastern end to avoid river channel impacts and north (down-slope) of the tracks on the western end to minimize wetlands impacts.

Lime Township Siding. The Draft EIS failed to identify a perennial stream at the bottom of the ravine. Numerous small streams are also in the area. The area is subject to flash flooding and erosion. Substantial earth moving in the area could contribute to soil instability. Historic records indicate rare sedges and the state-listed threatened loggerhead shrike exist in the area. DM&E should not build the siding in the area.

Cottonwood River Siding. The Cottonwood River siding should be located to the north of the track to avoid impacts to the well-vegetated, intact riverbanks on the south of the tracks. The Draft EIS incorrectly stated that this siding is in Brown County. It is in Redwood County.

Lake Benton/Verdi Siding. The Lake Benton/Verdi siding is located in an area of high quality wetland habitat. Good quality prairie remnants occur in the DM&E right-of-way. Numerous state-listed endangered species are within one mile of the right-of-way on two Wildlife Management Areas. Stream connections to the Rock River drainage make it likely that the federally listed endangered Topeka shiner inhabits the area.

Response

Chapter 12 of the Final EIS describes the specific mitigation SEA recommends to address potential impacts of sidings. As part of analysis in the Draft EIS, SEA considered the entire existing rail line right-of-way affected by rail line reconstruction. Therefore, SEA has considered potential impacts of construction of these and all rail sidings as part of its analysis.

Factor: F03B-Process - NEPA Compliance

10

Restatement

007554

127

One commenter stated that the Draft EIS did not describe alternatives to proposed rail yards or adequately evaluate the impacts of the rail yards. The Draft EIS considered alternatives for only two of the 19 rail yards evaluated (West Staging and Marshalling Yard and Middle East Staging and Marshalling Yard). Because the location of the other 17 rail yards is directly related to the distances traveled over the different route alternatives, the yard locations cannot be considered alternatives. The evaluation of each rail yard is insufficient. Fourteen of the rail yards are over 100 acres; one yard is 945 acres. The Board should complete more detailed analysis of each rail yard.

Another commenter stated that the Draft EIS did not evaluate any alternatives to the East Staging and Marshalling Yard. It appears that there are more suitable sites in the immediate vicinity that would have fewer impacts.

Another commenter said a switching yard in Wolsey, SD would be a more efficient alternative than the yard in Edgemont, SD. This location would provide for the shortest distance for DM&E grain customers to the West Coast and the Gulf of Mexico.

Response

As described in Chapter 1 of the Draft EIS, DM&E proposed five new rail yards. As described in Section 2.2.7 of the Draft EIS, these rail yards would be in different locations for each of the alternatives SEA evaluated. SEA developed alternatives for two yards to avoid sensitive resources at those locations. Chapter 4 of the Final EIS describes SEA's additional information and analysis of rail yards in response to public comments.

Regarding the East Staging and Marshalling Yard, commenters did not provide any specific alternate locations that would reduce environmental impacts. Regarding interchange with BNSF, the Edgemont Yard would provide DM&E an alternate BNSF interchange location. DM&E would interchange with BNSF at locations based on BNSF's preferred interchange location for each shipment.

Factor: F01M-Alternatives - Other

Restatement 007432 13

One commenter noted in a request to extend the public comment period, that the Southern Bypass Alternative presented in the Draft EIS was different from the route previously described by DM&E, which warrants additional time to review and comment on the impacts of this route. Another commenter said the Board should reissue the Draft EIS for a 30-day public comment period after correcting the errors regarding the M-2 Alternative.

Response

In response to public comments, the Board extended the public comment period for an additional 60 days to a total of 152 days (from September 27, 2000 to March 6, 2001). This extended comment period allowed communities, organizations, and individuals to review the Draft EIS and prepare comments. The Board has determined that the public had sufficient opportunity to comment on the Draft EIS and is not reissuing the Draft EIS.

Factor: F01I-Alternatives - Sidings

Restatement 007625 13

Several commenters stated that the Draft EIS did not adequately identify the locations of rail sidings. One commenter said the Draft EIS maps did not show milepost locations, making it difficult to evaluate the locations of proposed sidings.

One commenter said the Draft EIS did not indicate a preferred alternative, which would influence where rail sidings and yards are located. The Draft EIS indicated that Alternative B is DM&E' preferred alternative and DM&E' 404 permit application with the Army Corps of Engineers is based on Alternative C as the preferred alternative.

The commenter said the Draft EIS also did not describe how the locations of sidings would change if bypasses were constructed. For example the siding in Lime Township (Blue Earth County) would not be on the main line if the Mankato Southern Bypass Alternative (M-2) were built. The siding locations along the bypasses should be identified.

Response

Rail sidings would be constructed within the DM&E right-of-way. Chapter 4 of the Draft EIS included an evaluation of the potential environmental impacts of construction within the DM&E right-of-way, including rail sidings. SEA also included an evaluation of the transportation and safety impacts for rail sidings in the respective evaluations in Chapter 4 of the Draft EIS. SEA includes the specific locations of the sidings in Appendix I of the Final EIS.

Factor: F01F-Alternatives - Brookings Bypass

Restatement 007548 11

Several commenters expressed support for the proposed Brookings Bypass Alternative and the shorter, revised bypass developed by the City of Brookings. In their comments, the City of Brookings supported the Brookings Bypass Alternative and offered two alternatives that would further improve the bypass option. Commenters stated that the City' Alternatives B-4A and B-4Aa are reasonable and feasible bypass options that are shorter and less expensive to build than other bypasses. The revised bypass options would result in less impact to area residents for noise, vibration, safety, traffic delay, emergency response, pedestrian safety, air quality, and economic development. The options would also improve train operations during construction and for future operations.

Commenters stated that the Board should examine the revised Brookings bypass in the Final EIS. DM&E and the City of Brookings are negotiating an agreement regarding this bypass. The State of South Dakota has offered its right-of-way along Route 14 and the Route 14 bypass to DM&E and the State will fund a grade separation at Interstate 29. Some commenters said that the Board should require the shorter Brookings bypass as a condition of project approval.

Response

SEA acknowledges the comments supporting the Brookings Bypass. As described and explained in Chapter 5 of this Final EIS, SEA is not recommending the Brookings Bypass as mitigation for potential environmental impacts of the proposed project.

Factor: F02A-Analysis - Data Accuracy 0

Restatement 008716 11

One commenter noted that the Draft EIS statement that Alternative D will have greater air emissions and impacts to visibility at Badlands National Park, Black Elk Wilderness Area, and Wind Cave National Park was based on faulty logic. Prevailing winds in South Dakota are from the west and north. Although Alternative D is closer to Black Elk Wilderness Area and Wind Cave National Park, winds will be blowing away from the parks. Badlands National Park is downwind of the parks and Alternative C is closer to the park.

Response

SEA reviewed this comment and stands by its analysis in the Draft EIS (See Air Quality Modeling Report in Appendix E of the Draft EIS). SEA agrees that the prevailing winds in South Dakota are from the west and north. All or part of each of the extension alternatives SEA evaluated are located to the west of the Badlands National Park, Black Elk Wilderness, and Wind Cave National Park. SEA determined that Alternative C is the environmentally preferable alternative. Alternative C would have the fewest emissions and the least impact to visibility, primarily as a result of the shorter length of the route.

Factor: F01M-Alternatives - Other 3

Restatement 007665 1

Several commenters provided general comments about mitigation for the project. One commenter said the Draft EIS stated that mitigation "could" be imposed for any of the action alternatives, but the Board "hould" require mitigation to minimize impacts. The commenter also suggested that the Board consider building on trestles and viaducts where fill would be excessive. Another commenter stated that DM&E should reroute Alternatives B, C, and D to avoid the lands owned and controlled by Dennis Irwin and Jerry Dilts.

Response

In its final decision, the Board will consider all of the information in the Draft EIS and the Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of project-related community and environmental impacts where reasonable and practical. Regarding the potential impacts of cuts and fills, the Final EIS considers where this construction would result in impacts to the environment, such as impacts on wetlands. The Final EIS includes SEA's recommended mitigation for these types of impacts in Chapter 12. Although SEA received numerous comments requesting rerouting the route for new construction, SEA did not consider avoidance of specific private properties in selecting the preferred route for the proposed project.

Factor: F01G-Alternatives - Rochester Bypass

Restatement 008073 1

Several commenters had suggestions regarding the potential joint use of a bypass corridor for high-speed rail. One commenter said the heavy haul traffic should be routed away from downtown Rochester to allow for consideration of a high-speed rail link between Milwaukee and Chicago that could take advantage of unused airport capacity at Rochester to reduce congestion at Chicago airports.

Another commenter said the bypass route proposed by the City of Rochester is not adequate to be used also for high-speed rail. The alignment and curves are too tight for high-speed trains and the orientation and proximity to the airport would not allow for easy construction of a station there.

Response

In response to comments, SEA examined the high-speed rail option and determined that the potential for high-speed rail in the Rochester area is speculative and that its implementation in the same rail corridor is uncertain due to the incompatibility of freight rail with high-speed rail.

Factor: F01C-Alternatives - Mankato Bypass

82

Restatement 003329 1

Several commenters provided comments on the description and evaluation of the Mankato Southern Route Alternative (M-2). Commenters expressed concerns about incomplete, inaccurate, and insufficient information and analysis of the alternative for Board to make an informed decision.

Commenters stated that the Draft EIS did not contain sufficient information regarding the M-2 Mankato Southern Route Alternative to be considered a viable alternative to the M-1 (no build) and M-3 (existing route) alternatives. The route described on pages 2-55 and 2-56 does not match the route depicted in Figure 2-17. Figure 2-3 is not sufficiently detailed and does not show the location of Blue Earth County Highway 90. Maps 48, 49, and 54 through 57 provide additional detail, but do not show mileposts.

Commenters stated that the Draft EIS did not mention Skyline as a community affected by the Southern Route Alternative (M-2). The actual route would be on the east side of the Blue Earth River. This discrepancy and the failure to note significant features that would have to be addressed (e.g., the Blue Earth River and Mt. Kato Ski Area) indicates that the Board did not conduct a site visit on the route as described on page ES-2. The route on the west side of the river would destabilize the bluff upon which the city of Skyline is located. The DM&E has conducted limited engineering review of the M-2 Alternative, so it does not meet Board' criteria for evaluation of bypass alternatives. The route would require substantial engineering to accomplish, including substantial cuts and fills and numerous trestles and overpasses. The Southern Route Alternative would be detrimental to the rural area. The Draft EIS was not clear which route is evaluated for each impact. The Board should conduct a field examination of the route.

Commenters said the M-2 Southern Route Alternative will merely transfer impacts from one area to another, violate the Board' preference for using existing routes, destroy the peace and tranquility of the Blue Earth River Valley, prevent the City of Mankato from expanding southward, have a disastrous effect on the City of Skyline. The M-2 Alternative would have substantial impacts on woodlands, wetlands, grade crossing safety, homes and residential land, the Mt. Kato ski area, the Hillcrest nursing home, scenic values of the Blue Earth Valley, and Lehillier, an economic justice community.

Commenters stated that, given the inaccuracies of the Draft EIS and inadequate engineering evaluation, the conclusion that this southern route would have fewer impacts to human resources and is the environmentally preferred alternative is not supported by the data. The M-2 Alternative would result in substantial environmental and human impacts to Skyline Bluff, the Blue Earth River, the City of Skyline, and the Township of Mankato. The EIS must provide an accurate description of the

route and evaluate the impacts of the corrected route, including impacts to the City of Skyline and eight houses on the east side of the river. The M-2 route is not a viable alternative.

Commenters stated that the Draft EIS did not discuss the amount of traffic that would remain on the rail line through Mankato, if the Southern Route were constructed. Likewise, the Draft EIS did not discuss any planned improvements or possible abandonment of any portions of the existing route through Mankato. The Draft EIS erred in assuming that the existing route would not be used if the M-2 Alternative is constructed. The Draft EIS did not include impacts that would result from increased traffic on the existing route (M-3) in the analysis of the M-2 Alternative. DM&E states that service will improve to existing shippers and it will exchange coal traffic with UP over M-3 to reach new customers, so traffic will increase on the existing route, which should be included in the impacts of the M-2 Alternative. The comparison of alternatives in the Draft EIS further erred in assuming that there is no existing impact on either the M-2 or M-3 alternatives. The Final EIS should consider the change in impact for each alternative, considering the existing impacts to homes and businesses along the existing route.

The M-2 Alternative is not a viable route because DM&E has no intention of using the route. DM&E' preferred route is M-3. If the Board orders construction of the M-2 route and UP continues improvements to its route, there is a real possibility that the M-2 route would be abandoned in the future. The Board should drop consideration of the M-2 route.

Response

As described in Chapter 7 of this Final EIS, SEA has conducted a thorough evaluation of the Mankato Southern Route Alternative (M-2). Based on this evaluation, SEA determined that the Southern Route Alternative is the environmentally preferred alternative if the Board approves the proposed project. The evaluation in Chapter 7 discusses additional information for the route and the potential impacts to the City of Skyline. A technical report containing and addressing SEA's additional evaluation on Mankato is found in Appendix M of the Final EIS. Chapter 7 also includes a detailed description of the route and the potential environmental impacts. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, however in the event that alternative M-3 should become feasible, the M-3 route would be the preferred Alternative.

Factor: F02E-Analysis - Results

Restatement 003661 1

DM&E has described its plans to use the I&M Rail Link rail line to haul coal north and south from Owatonna, MN. The Board should inform the affected communities, evaluate the potential impacts to communities along this rail line, and make the evaluation available for public review.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

Factor: F01G-Alternatives - Rochester Bypass

Restatement 006450 1

Several commenters provided comments on the evaluation of the Rochester Bypass Alternative. Some commenters said the bypass would cause disruption to rural landowners.

One commenter stated opposition to the Rochester Bypass Alternative because it would eliminate service to existing shippers in Dodge County and affect property owners where the bypass would be constructed.

Other commenters said the Draft EIS underestimated the impacts of the reconstruction alternative through Rochester in comparison to the construction of a bypass. Construction on the existing route will include both the removal of existing rail and the construction of new rail. The Draft EIS did not provide a full and fair comparison of the construction impacts and schedule for the existing route to those of the new route.

Several commenters stated that the City of Rochester is prepared to commit substantial funds to support a Rochester bypass, so the Board should order the construction of the bypass as part of any order approving the project.

Response

As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 9 includes a complete description of the evaluation and the rationale for SEA's determination. Regarding the comment about potential impacts in Dodge County, the Rochester Bypass would not disrupt service to any shipping customers in Dodge County. The proposed bypass route leaves the existing DM&E line just after entering Olmsted County then turns south, paralleling the Dodge County line, several thousand feet inside Olmsted County.

Factor: F01C-Alternatives - Mankato Bypass

9

Restatement 007559 1

Several commenters provided comments regarding the Mankato Existing Route Alternative. Commenters stated that Alternative M-3 is not the environmentally preferred alternative. This alternative should be eliminated from further consideration. The Draft EIS described significant impacts of this alternative. Commenters said the Army Corps of Engineers has not completed a detailed analysis of the impacts to flood control project in Mankato so the impacts of the M-3 Alternative to flood control are unknown. Because the Draft EIS stated that the impacts of the M-2 Alternative are mitigatable and there is no corresponding statement regarding the M-3 Alternative, the City of Mankato assumes that the impacts of M-3 are not mitigatable or mitigation is not feasible for the M-3 Alternative. The Board should monitor any potential negotiations between UP and DM&E regarding improvements to the M-3 route without environmental review or regulatory oversight. Such an agreement would result in a de facto M-3 Alternative that was not disclosed in DM&E' application or contemplated in the Draft EIS.

Response

As described in Chapter 7 of this Final EIS, SEA determined that the Southern Route Alternative (M-2) is the environmentally preferred alternative for the project in the Mankato area if the Board approves the proposed project. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final

recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, but will recommend alternative, M-3, should that route become feasible.

Factor: F03C-Process - Public Outreach

8

Restatement 000244 1

Several commenters provided comments on the extent of public scoping for the Hay Canyon route alternatives. Many of these commenters were concerned that the Board and some cooperating agencies developed the WG Divide Alternative after public scoping and before the Bureau of Reclamation became a cooperating agency. Commenters were concerned that the WG Divide route is as environmentally sensitive as the Hay Canyon and Oral Alternatives and the public did not have an opportunity to identify issues. One commenter said that this route is now DM&E' preferred alternative, yet no scientists have visited the route and no one has contacted landowners. Other commenters said that page 6-26, line 10 of the Draft EIS indicated that the cooperating agencies participated in developing an alternative to avoid or minimize impacts to Hay Canyon. The Board should revise this description because the Bureau of Reclamation was not provided an opportunity to participate in the development of the WG Divide Alternative.

Response

In response to comments from the U.S. Fish and Wildlife Service, SEA and the cooperating agencies, except for the Bureau of Reclamation, coordinated with DM&E to develop the WG Divide Alternative. The agencies developed this alternative to avoid sensitive wetlands and riparian habitat along the Cheyenne River and Hay Canyon.

Upon development of the WG Divide Alternative it was determined that an easement would be needed to cross a federal irrigation project. At this point the Bureau of Reclamation was asked to participate as a cooperating agency on this EIS. DM&E consulted with the Bureau of Reclamation during development of mitigation and continues to consult with the Bureau on potential mitigation plans. Although the agencies developed the alternative before the Bureau of Reclamation became a cooperating agency, all of the cooperating agencies, including the Bureau of Reclamation, participated in conducting the environmental review and in preparing the Draft EIS.

The initial cooperating agencies conducted a thorough evaluation of the alternative, including site visits to the route and a comparison of environmental impacts with the other alternatives.

Factor: F03E-Process - Cooperating agencies policies, processes

8

Restatement 000244 1

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The initial cooperating agencies conducted a thorough evaluation of the alternative, including site visits to the route and a comparison of environmental impacts with the other alternatives.

Factor: F01M-Alternatives - Other

50

Restatement 000736 1

Several commenters stated that the Board should not accept the revised Brookings bypass alternatives for consideration after the Draft EIS was published. The Board established procedures for evaluating bypass options in the scoping process, which the Board should adhere to. Allowing a new proposal at this stage would result in additional analysis and delay.

One commenter said the City of Brookings has proposed that the City control the train traffic and right-of-way along the existing route and the proposed bypass. This proposal is contrary to law and precedence.

Other commenters said that DM&E has offered adequate mitigation on the existing route so there is no demonstrated need to relocate the traffic to a bypass route, which would only transfer the impacts from one community to another. The Draft EIS was not clear if the City of Brookings will pay for the two grade-separated crossings of Highway 14 and other mitigation requirements listed in the Draft EIS. Some commenters said the City should pay the entire cost of the bypass. Several commenters said that the City of Brookings has not discussed its shorter bypass proposal with the community.

Commenters stated that the Board should not allow submission of the new proposal after the Board deadline and reject the existing proposal on its merits (legal, engineering, and others). Commenters also stated that the City should prepare an application before the Board for construction and operation of the City's bypass proposal. Without such a process, the Board will not protect the property owners' rights for due process.

Response

As described in Chapter 6 of the Draft EIS and Chapter 6 of the Final EIS, SEA evaluated the original proposed Brookings bypass and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. As part of its review of the public comments on the Draft EIS, SEA also reviewed and considered the information provided by the City of Brookings regarding a modified bypass alternative and determined that the existing route through Brookings is the environmentally preferred alternative. Chapter 6 includes a complete description of SEA's evaluation and the rationale for its determination.

Factor: 0

Restatement 007542 68

One commenter said that Alternative M-3 presents the least impact of the Mankato alternatives. The commenter stated that the Final EIS should consider the No-Action Alternative for the Mankato area. DM&E believes that operation over the UP trackage rights is a feasible alternative that warrants consideration.

Response

As described in Chapter 7 of this Final EIS, SEA determined that the Southern Route Alternative (M-2) is the environmentally preferred alternative for the project in the Mankato area if the Board approves the proposed project. If DM&E reaches a trackage agreement with UP, M-3 would be a feasible alternative.

Factor:

0

Restatement 007566 90

Several commenters stated that the Board did not evaluate a sufficient range of alternatives for upgrading or improving the existing DM&E rail system.

One commenter said the Board relies on DM&E' stated purpose for the project, which as a single combination of several purposes, unjustifiably narrows the alternatives considered. Reviewing courts have determined that agencies must consider alternatives that partially accomplish the stated purpose. If the Board considers the purpose to include revenue generation to support rehabilitation, additional alternatives should be evaluated to accomplish that purpose. The Board did not evaluate alternatives to the rehabilitation because it is not within Board' jurisdiction. NEPA requires the Board to evaluate all reasonable alternatives to the proposed action, including those that are not within the agency' jurisdiction. The Board has the jurisdiction to deny DM&E' proposal to generate revenue for the rehabilitation by constructing new rail line to serve the PRB.

Several commenters said the EIS should evaluate public financing and public-private partnerships for improving the DM&E rail system. Some commenters said the Board should consider an alternative of public private ownership of the DM&E line, possibly with the State of Minnesota. Other commenters said that DM&E has indicated that it is discussing \$100 million of potential funding from the Railroad Rehabilitation and Improvement Fund (RRIF). Since the Draft EIS indicated that the mitigation necessary to implement an action alternative is substantial and may not be accomplished, the Board should weigh the benefits of the proposed project against the possibility of an upgrade using funds from the RRIF.

Response

Based on the public comments on the Draft EIS, SEA considered and evaluated possible funding sources for the rehabilitation of the existing DM&E rail line, including the potential use of the Railroad Rehabilitation and Improvement Fund (RRIF). SEA determined that use of the RRIF is the only reasonably foreseeable option for funding rehabilitation of the existing DM&E rail system. Chapter 3 includes an evaluation of RRIF as an alternative to the proposed project. As noted by one of the commenters, the rehabilitation of the existing DM&E rail system alone would not meet DM&E's stated purpose of providing a third competitive rail carrier into the Powder River Basin.

Factor:

0

Restatement 008716 11

One commenter noted that the Draft EIS statement that Alternative D will have greater air emissions and impacts to visibility at Badlands National Park, Black Elk Wilderness Area, and Wind Cave National Park was based on faulty logic. Prevailing winds in South Dakota are from the west and north. Although Alternative D is closer to Black Elk Wilderness Area and Wind Cave National Park, winds will be blowing away from the parks. Badlands National Park is downwind of the parks and Alternative C is closer to the park.

Response

SEA reviewed this comment and stands by its analysis in the Draft EIS (See Air Quality Modeling Report in Appendix E of the Draft EIS). SEA agrees that the prevailing winds in South Dakota are from the west and north. All or part of each of the extension alternatives SEA evaluated are located to the west of the Badlands National Park, Black Elk

Wilderness, and Wind Cave National Park. SEA determined that Alternative C is the environmentally preferable alternative. Alternative C would have the fewest emissions and the least impact to visibility, primarily as a result of the shorter length of the route.

Factor: 0

Restatement 007432 13

One commenter noted in a request to extend the public comment period, that the Southern Bypass Alternative presented in the Draft EIS was different from the route previously described by DM&E, which warrants additional time to review and comment on the impacts of this route. Another commenter said the Board should reissue the Draft EIS for a 30-day public comment period after correcting the errors regarding the M-2 Alternative.

Response

In response to public comments, the Board extended the public comment period for an additional 60 days to a total of 152 days (from September 27, 2000 to March 6, 2001). This extended comment period allowed communities, organizations, and individuals to review the Draft EIS and prepare comments. The Board has determined that the public had sufficient opportunity to comment on the Draft EIS and is not reissuing the Draft EIS.

Factor: 0

Restatement 008066 45

The description of the options for the Middle East Staging and Marshaling Yard are inadequate. The Draft EIS did not provide detailed descriptions of plans, activities, and materials used or stored at the yard. The Draft EIS did not account for the following information:

Option A would place the yard entirely within the statutory boundaries of Minneopa State Park. Although the state has not acquired all of the land for the park, the rail yard would be an incompatible use. Much of the area north of the tracks, the only area for the yard, is wetlands, with intermittent streams connecting to the Minnesota River. There are prairie remnants of fair to good quality in Sections 2 and 3. There is good cover for pheasant, deer, wild turkeys, and raptors.

Option B is in an area with a perennial stream, subject to flooding (the Draft EIS said an intermittent stream). There are state-listed endangered rock-pocketbook and warty back mussels and state-listed threatened mucket nearby in the river.

There is no analysis of impacts for Option D.

Another commenter stated that, according to the Draft EIS, Option A would have less impact on wetlands and DM&E has identified Option B as its preferred option. To comply with the Clean Water Act regarding wetlands, DM&E must provide additional information as to why Option A is not practicable or that Option B is less damaging to the aquatic ecosystem. The Draft EIS indicated that Option B would affect 10.4 more acres of wetland and 109.4 more acres of prime farmland than Option A. Option A would affect 116.4 acres of land identified for acquisition for Minneopa State Park.

Regarding the comparison of Options A and B for the Middle East Staging and Marshaling Yard, one commenter stated that Board should select the option that minimizes impacts to private property.

Similar

The commenter stated that if the project was for the public good, DM&E should use public land wherever possible. Another commenter said that the staging area near New Ulm should be located east of the proposed area, between Shag Road and Courtland, MN. Another commenter said that the Board should deny the location of the Middle East Staging Yard. If the Board approves the yard, DM&E should provide concessions or remuneration to local residents for the disruption.

Response

Chapter 4 of the Final EIS includes additional discussion and evaluation of the Middle East Staging and Marshaling Yard and alternative locations. Based on this evaluation, SEA has determined that Option B is the environmentally preferred alternative, if the Board approves the project. Chapter 4 of the Final EIS includes discussion of SEA evaluation of potential impacts for each option, including the potential impacts to wetlands.

Factor: 0

Restatement 007554 183

One commenter was concerned about the safety at potentially blocked crossings.

Response

SEA recognizes the concerns for highway and rail safety in Rochester and Olmsted County. Proposed mitigation for the proposed project includes the installation, by DM&E, of two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at an other mutually acceptable location. The Applicant will negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities and the City of Rochester on the design, location, and funding of these grade separations.

DM&E will complete the installation of one grade separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. They will complete installation of a second grade separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year. These grade separated crossings should be designed and located to facilitate the movement of emergency vehicles to and from medical facilities providing emergency services in Rochester, including St. Mary's Hospital and Methodist Hospital.

Factor: 0

Restatement 007561 7

Several commenters provided comments on the development and evaluation of the Rochester Bypass Alternative. One commenter said the Draft EIS did not examine reasonable and feasible options for bypassing Rochester. The Draft EIS evaluated a new Rochester Bypass Alternative, which is incorrectly referred to as mitigation. The Draft EIS did not examine alternate routes to bypass Rochester. In accordance with CEQ requirements, the EIS should identify all alternatives to the route through Rochester, screen them to determine which are reasonable and feasible, and compare the impacts of those that are found to be reasonable and feasible. These alternatives should include routes over alternate carriers between the extension routes and Rochester as well as barging and trucking, or combinations thereof. The Board' failure to consider several route alternatives does not comply with requirements to take a "hard look" at alternatives.

Several commenters said the Board should deny efforts by the City of Rochester and others to submit further modifications to the Rochester Bypass Alternative. Late changes to the proposals prejudices those parties who have spent time and resources commenting on the proposals as presented in the Draft EIS.

One commenter said the bypass route identified by the City of Rochester was designed to avoid future industrial and residential development in the city and to avoid crossing I-90 and affecting other communities to the south of I-90. The consequence of these criteria is that the route is located in natural resource protection areas and on

farmland. The City subsequently revised the route (June 10, 1999) to avoid wetlands in Rock Dell and High Forest townships and a planned rerouting of Highway 30. Several commenters expressed concern that the communities and residents affected by the Rochester Bypass Alternative have not had access to the City of Rochester' analysis of the bypass or negotiations with DM&E.

Response

During public scoping for the project, the Board solicited comments from the affected public about potential impacts of the proposed DM&E project and suggested alternative routes to bypass communities. The City of Rochester submitted a bypass alternative for the Board's evaluation. The City's proposal was the result of the City's evaluation of the best option for the proposed rail traffic to bypass the City of Rochester. SEA also evaluated alternatives that would use existing rail corridors or rights-of-way as alternatives for the new construction portions of the project. SEA determined that the alternatives operating over rail lines owned by other rail carriers would not accomplish the project purpose.

As described in Chapter 9 of the Final EIS, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project.

Factor: 0

Restatement 007554 133

One commenter said that the Draft EIS did not include any analysis of the environmental impacts of the operations at or alternate locations for the proposed maintenance facility in Huron.

Response

Chapter 4 of the Draft EIS included a discussion of the potential environmental impacts of the Huron maintenance facility. As described in Section 2.2.7 of the Draft EIS, the location of the rail yards for each alternative are determined primarily by operational considerations. Because of the different lengths of each of the Alternatives, the Huron (Central or Middle) Yard would be in a different location for each alternative. SEA's evaluation of the alternative locations is described in Section 4.10 in the Draft EIS.

Factor: 0

Restatement 006450 1

Several commenters provided comments on the evaluation of the Rochester Bypass Alternative. Some commenters said the bypass would cause disruption to rural landowners.

One commenter stated opposition to the Rochester Bypass Alternative because it would eliminate service to existing shippers in Dodge County and affect property owners where the bypass would be constructed.

Other commenters said the Draft EIS underestimated the impacts of the reconstruction alternative through Rochester in comparison to the construction of a bypass. Construction on the existing route will include both the removal of existing rail and the construction of new rail. The Draft EIS did not provide a full and fair comparison of the construction impacts and schedule for the existing route to those of the new route.

Several commenters stated that the City of Rochester is prepared to commit substantial funds to support a Rochester bypass, so the Board should order the construction of the bypass as part of any order approving the project.

Response

As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 9 includes a complete description of the evaluation and the rationale for SEA's determination. Regarding the comment about potential impacts in Dodge County, the Rochester Bypass would not disrupt service to any shipping customers in Dodge County. The proposed bypass route leaves the existing DM&E line just after entering Olmsted County then turns south, paralleling the Dodge County line, several thousand feet inside Olmsted County.

Factor:

0

Restatement

007665

1

Several commenters provided general comments about mitigation for the project. One commenter said the Draft EIS stated that mitigation "could" be imposed for any of the action alternatives, but the Board "hould" require mitigation to minimize impacts. The commenter also suggested that the Board consider building on trestles and viaducts where fill would be excessive. Another commenter stated that DM&E should reroute Alternatives B, C, and D to avoid the lands owned and controlled by Dennis Irwin and Jerry Dilts.

Response

In its final decision, the Board will consider all of the information in the Draft EIS and the Final EIS and determine whether to approve the project. If the Board approves the project, it will also require DM&E to implement mitigation to mitigate environmental impacts of the project. While the Board is not required to mitigate all impacts of the project, its past practice has been to require mitigation of project-related community and environmental impacts where reasonable and practical. Regarding the potential impacts of cuts and fills, the Final EIS considers where this construction would result in impacts to the environment, such as impacts on wetlands. The Final EIS includes SEA's recommended mitigation for these types of impacts in Chapter 12. Although SEA received numerous comments requesting rerouting the route for new construction, SEA did not consider avoidance of specific private properties in selecting the preferred route for the proposed project.

Factor:

0

Restatement

007676

4

Several commenters suggested that the Board should evaluate various alternatives that involve use of existing rail lines owned and operated by other rail carriers, such as UP or BNSF. Specific suggested alternatives included the following:

Modified Alternative A. This alternative would allow DM&E access to the PRB over existing BNSF lines. One commenter noted that this alternative would provide DM&E with additional revenues from coal transport, cause few environmental impacts, and increase competition for coal shippers.

One commenter suggested evaluating the use of the existing BNSF line from Edgemont, SD to the PRB. Another commenter noted that DM&E could connect to BNSF at Wolsey, SD to gain access to the western markets.

One-way Coal Traffic Loop. This alternative would involve a loop of one-way traffic flow using existing UP and BNSF rail lines for the loaded coal cars and the expanded DM&E system for returning the unloaded cars to the PRB. According to the commenter, such a system would increase the coal haul capacity by 300 million tons and require less extensive upgrades and less new construction on the DM&E system. This approach would allow for less stringent engineering standards (2-degree curves and 2 percent grade), reduce environmental impacts, and cost approximately half the proposed construction costs. Although this alternative would result in increased rail traffic on the DM&E line above the

traffic levels proposed and would likely reduce or eliminate service to existing shippers, nevertheless, it is a reasonably foreseeable alternative that the Board should examine in the Draft EIS.

Other commenters generally suggested the joint use of UP, BNSF, and DM&E rail lines and trackage rights.

Response

The Board considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. The Draft EIS described the evaluation of several alternatives for routing DM&E train traffic from the existing DM&E rail system over new rail lines that would be constructed in the rail rights-of-way owned by BNSF or UP. The Draft EIS described the evaluation of these alternatives in Chapter 2. Chapter 2 of the Draft EIS described SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). SEA did not consider alternatives where DM&E would operate its trains over rail lines owned by other railroads because the Board does not have the authority to order DM&E to operate over the rail lines of another carrier. Implementation of this alternative would require a negotiated trackage rights agreement between DM&E and any other railroad over which DM&E wanted to operate. Because DM&E has not proposed such an action or entered into negotiations with BNSF or UP, SEA does not consider the alternatives that would route traffic over other railroads' rail lines to be reasonable or feasible alternatives warranting further environmental review.

Factor:

0

Restatement

008066

1

Some commenters said that the Board should evaluate a modified Alternative D that would bypass Rapid City, SD and use more of the existing DM&E line than Alternative C. This alternative would bypass Rapid City to the south and use the existing DM&E right-of-way between Rapid City and Smithwick, SD. At Smithwick, the alignment would join the alignment of the proposed Alternative C west to the PRB. The commenters stated that this alternative would have a shorter distance than Alternative C and fewer environmental impacts.

One commenter disagreed with the Draft EIS statement that a bypass around Rapid City has not been identified. The commenter stated that several suggested bypasses were presented to the Board, including a route paralleling the Southeast Connector of I-90 to Highway 79. The commenter also noted that the Draft EIS stated that additional bypasses would be necessary for smaller towns on the existing route. If DM&E is unwilling to bypass Pierre and Brookings, SD why does the Board consider bypasses to be necessary for smaller towns? The Board should reconsider Alternative D with this bypass of Rapid City.

Response

Based on public and agency comments on the Draft EIS, SEA conducted further analysis of a modified Alternative D that would use more of the existing DM&E rail line than the Alternative D evaluated in the Draft EIS. Based on additional engineering work provided by DM&E and reviewed and verified by SEA, SEA determined that this alternative would result in substantially greater environmental impacts and therefore was not a reasonable alternative to the proposed project. SEA described the initial evaluation of this alternative in Chapter 4 of the Draft EIS and the subsequent evaluation in Chapter 3 of this Final EIS. Regarding potential bypass alternatives for Rapid City, the Board did not receive any proposal for such a bypass in response to its request to the parties to the proceeding (Notice to the Parties, April 20, 1999). By that time, the Board had received bypass proposals from Rochester and Owatonna, MN and Pierre/Ft. Pierre and Brookings, SD.

11/15/2001

Similar
0

Factor:

Restatement 008073 1

Several commenters had suggestions regarding the potential joint use of a bypass corridor for high-speed rail. One commenter said the heavy haul traffic should be routed away from downtown Rochester to allow for consideration of a high-speed rail link between Milwaukee and Chicago that could take advantage of unused airport capacity at Rochester to reduce congestion at Chicago airports.

Another commenter said the bypass route proposed by the City of Rochester is not adequate to be used also for high-speed rail. The alignment and curves are too tight for high-speed trains and the orientation and proximity to the airport would not allow for easy construction of a station there.

Response

In response to comments, SEA examined the high-speed rail option and determined that the potential for high-speed rail in the Rochester area is speculative and that its implementation in the same rail corridor is uncertain due to the incompatibility of freight rail with high-speed rail.

Factor: 0

Restatement 007765 23

Several commenters suggested alternatives for routing train traffic through or around Brookings. One commenter said the City of Brookings should examine an alternative bypass location that routes through the undeveloped portions of the industrial park and through state land on the south side of Highway 14. This route would maximize the use of public and state land, which is the City's stated goal. Another commenter said the Board should evaluate an alternative of depressing the rail line between Medary Avenue and a point east of 22nd Avenue. Depressing the tracks 10 to 15 feet would increase safety, improve the railroad grade, and reduce noise. If necessary, DM&E could purchase some homes along the line to create sufficient space for berms.

Response

SEA evaluated proposed bypass alternatives submitted by communities during the time period requested by the Board. Each community evaluated bypass options and submitted the option they believed would be the best alternative for consideration.

Factor: 0

Restatement 007676 5

One commenter said the Board should evaluate the possibility of a future purchase of DM&E by one of the existing carriers that serve the PRB. If DM&E were purchased, the competition benefits of the proposed project would not be realized and environmental and economic disruption would occur. [7676 #5]

Response

At this time, SEA considers that any future purchase of DM&E is speculative. There is no evidence available that such an action is reasonably foreseeable. However, if another railroad proposed to purchase DM&E at some future time, such an action would be subject to review and approval by the Board as a separate proceeding, including a consideration of the competitive merits. If one of the carriers that currently serve the Powder River Basin proposed to purchase DM&E, competitive service from two rail carriers would remain and the competitive benefits of DM&E's shorter, more efficient route would still exist.

Factor:

Restatement 007700 2

Several commenters provided general comments on Alternative C. One commenter stated that the Draft EIS identified Alternative C as the preferred alternative and any refuting information supporting other alternatives was downplayed as unimportant.

Another commenter said the Alternative C realignment of the existing corridor to address operational problems at Wall, SD still presents substantial problems caused by substantial earthworks requirements, unstable shale, and badlands areas. From an engineering and environmental perspective, it would be preferable to avoid the Cheyenne River Valley entirely. Alternatives B and C do not provide engineering benefits over the existing route from Wasta to Smithwick, SD, and these alternatives result in environmental impacts in the Cheyenne River Valley.

Response

SEA conducted a thorough and independent evaluation of the alternative routes for the new construction portion of the project. Based on the analysis of alternatives described in the Draft EIS and the additional information provided in the Final EIS in response to public comments, SEA determined that Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative, if the Board approves the proposed project.

DM&E proposed the Alternative C realignment at Wall, SD to address operational constraints for coal trains at that location. SEA conducted an environmental review of that realignment as part of its evaluation of Alternatives B and C in the Draft EIS and acknowledged the impacts discussed by the commenter. SEA determined that both Alternatives B and C provide engineering and operational benefits and fewer environmental impacts compared to the existing route from Wasta to Smithwick. SEA's discussion of the Modified Alternative D in Chapter 3 of this Final EIS provides further information and discussion of this comparison.

Factor: 0

Restatement 007707 2

One commenter expressed concern for the potential impact of the karst topography on the bypass in Dodge County.

Response

SEA acknowledges the concern expressed by citizens for the issue of karst topography associated with bypass routes in the project area. SEA is not recommending any bypass alternatives for consideration. A detailed explanation of the impacts of the project on the karst topography is found in Chapter 9 of this Final EIS.

Factor: 0

Restatement 007625 13

Several commenters stated that the Draft EIS did not adequately identify the locations of rail sidings. One commenter said the Draft EIS maps did not show milepost locations, making it difficult to evaluate the locations of proposed sidings.

One commenter said the Draft EIS did not indicate a preferred alternative, which would influence where rail sidings and yards are located. The Draft EIS indicated that Alternative B is DM&E' preferred alternative and DM&E' 404 permit application with the Army Corps of Engineers is based on Alternative C as the preferred alternative.

Similar

The commenter said the Draft EIS also did not describe how the locations of sidings would change if bypasses were constructed. For example the siding in Lime Township (Blue Earth County) would not be on the main line if the Mankato Southern Bypass Alternative (M-2) were built. The siding locations along the bypasses should be identified.

Response

Rail sidings would be constructed within the DM&E right-of-way. Chapter 4 of the Draft EIS included an evaluation of the potential environmental impacts of construction within the DM&E right-of-way, including rail sidings. SEA also included an evaluation of the transportation and safety impacts for rail sidings in the respective evaluations in Chapter 4 of the Draft EIS. SEA includes the specific locations of the sidings in Appendix I of the Final EIS.

Factor: 0

Restatement 007542 71

Several commenters provided comments on the route alternatives for the Owatonna area. One commenter said the Board should approve the O-4 Alternative in Owatonna. This alternative will provide the competitive incentive for DM&E and I&M Rail Link to negotiate an agreement to use the existing rail link in Owatonna, which is DM&E' and the City of Owatonna' preferred alternative. Without approval of the O-4 Alternative, the parties will not have the incentive to reach a fair agreement to use existing rail lines. Another commenter stated that Alternative O-3 appears preferable to Alternative O-5 based on fewer habitat impacts identified in the Draft EIS. Other commenters supported the Owatonna bypass proposed and withdrawn by the City of Owatonna.

Response

As described in Chapter 8, SEA completed a thorough evaluation of the alternative routes through the Owatonna area. Based on this evaluation, SEA has determined that Alternative O-4 is the environmentally preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the preferred alternative, if it were a feasible alternative. The alternative is not feasible because an agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative. Chapter 8 includes a complete discussion of the Owatonna alternatives and SEA's rationale for its determination.

Factor: 0

Restatement 007625 14

One commenter provided specific comments on the potential environmental impacts of several sidings in Minnesota.

Minneopa State Park Siding. The Draft EIS did not adequately evaluate the proposed siding at Minneopa State Park. The retaining wall may not be feasible due to seeps and springs.

The Draft EIS did not evaluate the proposed Minnesota River channel modifications. The effort necessary to stabilize soils at the western end of the siding could affect plant species in the vicinity. The siding should be relocated to another area. If the siding is built at this location, it should be built south (up-slope) of the tracks on the eastern end to avoid river channel impacts and north (down-slope) of the tracks on the western end to minimize wetlands impacts.

Lime Township Siding. The Draft EIS failed to identify a perennial stream at the bottom of the ravine. Numerous small streams are also in the area. The area is subject to flash flooding and erosion. Substantial earth moving in the area could contribute to soil instability. Historic records indicate rare sedges and the state-listed threatened loggerhead shrike exist in the area. DM&E should not build the siding in the area.

Cottonwood River Siding. The Cottonwood River siding should be located to the north of the track to avoid impacts to the well-vegetated, intact riverbanks on the south of the tracks. The Draft EIS incorrectly stated that this siding is in Brown County. It is in Redwood County.

Lake Benton/Verdi Siding. The Lake Benton/Verdi siding is located in an area of high quality wetland habitat. Good quality prairie remnants occur in the DM&E right-of-way. Numerous state-listed endangered species are within one mile of the right-of-way on two Wildlife Management Areas. Stream connections to the Rock River drainage make it likely that the federally listed endangered Topeka shiner inhabits the area.

Response

Chapter 12 of the Final EIS describes the specific mitigation SEA recommends to address potential impacts of sidings. As part of analysis in the Draft EIS, SEA considered the entire existing rail line right-of-way affected by rail line reconstruction. Therefore, SEA has considered potential impacts of construction of these and all rail sidings as part of its analysis.

Factor:

0

Restatement 007674 24

Several commenters expressed concerns about the adequacy of the evaluation of Alternative D, including the comparison of this alternative with Alternative C. Commenters said that DM&E and the Board should develop Alternative D to the same level of detail as Alternatives B and C to allow for an effective, accurate comparison of the alternatives.

Several commenters noted that the Draft EIS Executive Summary (page ES-38) indicates that Alternative D was eliminated from further consideration, but Chapter 2 (page 2-43) says that it was retained for detailed analysis.

One commenter provided specific comments on the Draft EIS evaluation of Alternative D. The commenter said the Board' analysis and elimination of Alternative D is based on information from DM&E in a letter dated June 9, 1999 and much of this information is inaccurate. The commenter stated that Board should conduct an independent, accurate analysis and comparison for Alternative D. The comments included the following:

DM&E' terrain and altitude difference on the existing line between Rapid City and Smithwick is inaccurate. The terrain on the existing route is better than on Alternative C. The commenter stated that Alternative D-2 was rejected inappropriately based solely on distance, not considering the grade.

DM&E' cut and fill estimates are not consistent for each alternative. The Draft EIS did not support general claims that construction on Alternative C would not require extensive cut and fill.

For the 102.1 miles of Alternative D would require construction on new right-of-way, the EIS should include a more extensive discussion of the potential impacts to landowners, landowner rights, potential use of eminent domain, landowner opinion surveys regarding eminent domain, and a recent South Dakota law limiting the use of eminent domain.

The Draft EIS was inaccurate in the statement that Alternative D is substantially longer and may not meet one of the project goals, which is to efficiently deliver low-sulfur coal from the PRB. Alternative D is 70 miles longer (and would be less with a Southeast Connector bypass of Rapid City), which is not a substantial difference in a 1,000-mile project. Also, if the Board does not select Alternative D, the purpose of upgrading the existing line would not be accomplished.

If the Draft EIS acknowledged that construction in existing rail corridors is generally preferable to new construction and bypasses would not meet the purpose of improving service to existing shippers, how did the Board select Alternative C as preferred to Alternative D? Alternative C will not improve service to existing shippers along the existing route

through Rapid City. The Board should identify and quantify the shippers in the Rapid City/Black Hills area that would lose service. The Board should be consistent about not recommending bypasses, including the Rapid City bypass (Alternative C).

Response

SEA included Alternative D in the detailed evaluation of alternatives. SEA also included a comparative evaluation of Alternative D with Alternatives B and C in the Draft EIS. However, SEA eliminated some variations on Alternative D from the detailed evaluation. Chapter 2 of the Draft EIS described this screening process. In response to public comments, SEA considered a Modified Alternative D, including an evaluation of the potential impacts of the necessary construction to make the existing route suitable for coal trains. Based on this evaluation, SEA determined that this Modified Alternative D is not a reasonable alternative to the proposed project due to the substantial environmental impacts. Chapter 3 includes the discussion of SEA's analysis of Modified Alternative D.

Issues relating to property acquisition for rail rights-of-way and eminent domain are not within the Board's jurisdiction, but rather, are handled under the appropriate state law.

In finding that Alternative C appeared to be the "least environmentally intrusive" alternative in the Draft EIS, SEA compared potential environmental impacts associated with the full range of feasible alternatives under consideration. Alternative D would minimize environmental impacts by relying on existing transportation corridors, but would be substantially longer when compared to Alternative C.

Factor:

0

Restatement

007542

73

Several commenters provided comments on the Draft EIS in consideration of bypass alternatives and the Board' jurisdiction to impose bypass conditions for the proposed project. The commenters made the following specific comments that the Board does not have the jurisdiction to require bypasses:

Because Board has no jurisdiction over the rehabilitation of DM&E' existing line, these bypasses are not alternatives to the proposed action, which is the construction of new rail line from DM&E' existing system to the PRB.

Even if the Board determines that 49 U.S.C 10901 expands its jurisdiction to impose conditions on the rehabilitation portion of the project, construction of a bypass would be a construction case in its own right and would require an application before the Board and consideration of the public convenience and necessity.

The Board does not have jurisdiction to require DM&E to file an application to construct bypasses as a condition of approval of the proposed project. Conditioning approval of the proposed DM&E expansion on the approval of such a bypass would prejudice the merits of a bypass construction application.

The Board does not have the authority to regulate rail traffic flows. By ordering the construction of any of these bypasses, the Board would be directing rail traffic operations onto certain rail lines. Therefore, even if the Board could order DM&E to construct a bypass, it could not direct DM&E to move coal over a bypass in contravention of the Staggers Rail Act, related Federal rail policy, and Board precedent.

Any Board order requiring construction of the bypasses would result in legal challenges to the Board' jurisdiction and constitutional issues regarding the lack of demonstrated need for property takes.

These bypasses in South Dakota are not reasonable mitigation for impacts of constructing new rail line in Wyoming and western South Dakota.

The bypass alternatives would merely transfer operating impacts to another area and result in a substantial increase in construction impacts.

Construction of bypasses does not address the serious safety issues on the existing route.

The bypasses would eliminate the benefit of improved service for existing shippers.

The cost estimates provided by the cities are unreasonably low and were not developed with any accountability for engineering and operational feasibility, safety, or cost overruns.

One commenter said the EIS should define the bypasses as extra-jurisdictional measures to mitigate indirect impacts of the proposed project. Several commenters noted that the proposed project is not feasible if it is conditioned on construction of bypasses and the length and complexity of legal challenges would in effect kill the project. For these reasons, the Board should approve the project without the bypass alternatives or deny the project in its entirety.

Response

SEA acknowledges the important and substantive comments on the Board's jurisdiction to impose bypasses as mitigation for the environmental impacts of the proposed project. SEA's evaluation of bypasses in the Draft and Final EIS examined and described the potential environmental impacts of the bypass alternatives. SEA is not recommending the community-proposed bypasses as the environmentally preferred alternatives in those communities. With this Final EIS, SEA presents the results of the evaluation and its recommendations to the Board for consideration in its final decision. SEA did not examine the Board's jurisdiction to impose bypasses, but provides these comments to the Board for consideration.

Factor:

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Restatement 007566 2

Several commenters provided general comments on the evaluation of bypasses. One commenter said the Board should be stating preferences for bypass alternatives, rather than seeking preferences from the public.

Another commenter said the proposed Rochester and Brookings bypasses have substantial impacts to the environment, including farms, wetlands, and streams.

One commenter said the Draft EIS was not clear on who would pay for the bypasses. Another commenter said the cost of bypasses should be borne by the community, not DM&E. Another commenter stated that the costs of the bypass alternatives are unreasonable and unwarranted and that the cities' estimates for the cost of the bypasses are unrealistically low. The commenter also stated that even if a city agreed to pay 100 percent of the cost of a bypass, the bypass alternatives are so fraught with legal and other problems that they should be rejected on their own lack of merit.

One commenter asked if the Board conducted any analysis of the Lower Brule Reservation and a bypass in that area.

Response

SEA provided a thorough evaluation of bypass alternatives, including a comparison of environmental impacts of each bypass with those associated with the rehabilitation of the existing route, for public review and comment. As described in Chapters 5 (Pierre), 6 (Brookings), 7 (Mankato), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts. As a result, SEA is not recommending potential cost sharing arrangements for constructing bypasses. Further discussion of SEA's consideration of bypasses is in Chapters 5 through 9.

Factor:

Restatement 007660 39

Several commenters stated concerns about the public scoping process and the objectivity of the Board' review of alternatives. Several Native American interests stated that Native American Tribes were not invited to identify concerns about the selection of alternatives for public review or the location of staging and marshalling yards during the scoping process. The commenters said that the proposed alternatives are incomplete because the Board did not complete the appropriate tribal consultation process under 40 CFR 1502.25. A letter to the Tribal Council or Chairman does not constitute sufficient government-to-government consultation.

Other commenters said that the routes and alternatives should have been established during scoping. Draft EIS statements that the Board will determine the final route in the Final EIS are contrary to the public review objectives of NEPA. Another commenter said that the Board appears to be transferring the agency decisionmaking burden to the public on the selection of alternatives and options for Alternative C, Rochester and Brookings bypasses, which yards to construct, and the selection of mitigation. Another commenter was concerned that statements regarding alternatives that would bypass communities will not meet DM&E' goals, demonstrating that the Board' analysis of alternatives is not objective.

Response

The Board completed a thorough alternatives analysis in compliance with NEPA requirements. During public scoping, the Board sought comments from the public on the alternatives and environmental issues to be addressed in the environmental review. The Board received more than 5,000 comments during scoping, many of which suggested specific alternatives for the Board to evaluate. The Board and the cooperating agencies presented their evaluation of the alternatives in the Draft EIS, seeking public comments on the evaluation.

The Board will consider all of the available information in making its final decision on the DM&E project, including the selection of alternatives and the mitigation requirements.

Regarding the comments on Native American consultation, the Board conducted extensive consultation with Native American Tribes during scoping and preparation of the Draft EIS as well as during and after the public comment period on the Draft EIS. The consultation was fully compliant with 40 CFR 1502.25 and included numerous meetings with tribal interests. The outreach activities to Native American Tribes are discussed more fully in Chapter 11 of this Final EIS and in the Environmental Justice Appendix of the Draft EIS (Appendix D).

Factor:

0

Restatement 007554 127

One commenter stated that the Draft EIS did not describe alternatives to proposed rail yards or adequately evaluate the impacts of the rail yards. The Draft EIS considered alternatives for only two of the 19 rail yards evaluated (West Staging and Marshalling Yard and Middle East Staging and Marshalling Yard). Because the location of the other 17 rail yards is directly related to the distances traveled over the different route alternatives, the yard locations cannot be considered alternatives. The evaluation of each rail yard is insufficient. Fourteen of the rail yards are over 100 acres; one yard is 945 acres. The Board should complete more detailed analysis of each rail yard.

Another commenter stated that the Draft EIS did not evaluate any alternatives to the East Staging and Marshalling Yard. It appears that there are more suitable sites in the immediate vicinity that would have fewer impacts.

Another commenter said a switching yard in Wolsey, SD would be a more efficient alternative than the yard in Edgemont, SD. This location would provide for the shortest distance for DM&E grain customers to the West Coast and the Gulf of Mexico.

Response

As described in Chapter 1 of the Draft EIS, DM&E proposed five new rail yards. As described in Section 2.2.7 of the Draft EIS, these rail yards would be in different locations for each of the alternatives SEA evaluated. SEA developed alternatives for two yards to avoid sensitive resources at those locations. Chapter 4 of the Final EIS describes SEA's additional information and analysis of rail yards in response to public comments.

Regarding the East Staging and Marshalling Yard, commenters did not provide any specific alternate locations that would reduce environmental impacts. Regarding interchange with BNSF, the Edgemont Yard would provide DM&E an alternate BNSF interchange location. DM&E would interchange with BNSF at locations based on BNSF's preferred interchange location for each shipment.

Factor:

0

Restatement 007554 145

Several commenters stated that the EIS should include a more detailed, descriptive comparison of environmental impacts for each alternative, including estimates of the magnitude of impact. More detailed comparisons would account for the unique characteristics of each community and ranch, allow the public to provide meaningful comments on the relative impacts, and assist the agencies in identifying which alternative is the least damaging to the environment, particularly for alternatives through and around Mankato, Owatonna, and Rochester, MN. This comparison of alternatives should include the "net" effects to the environment after the application of mitigation and compare the costs and impacts of each alternative to the costs and impacts of the No-Action Alternative. For wetlands impacts, the comparison should be consistent with the Clean Water Act Section 404 (b)(1) and consider all practicable alternatives. Specifically, the EIS should provide additional comparative information for the following:

Potential impacts to wetlands and waters of the United States. Estimated impacts from stream bank modification and channelization, changing hydrology, vegetation removal, erosion, increased sedimentation, degraded water quality, potential loss of habitat for some species, loss of cultural resources, and cut and fill activities. Amount of cut and fill required for each alternative. Comparative cost for each alternative, including the cost of rehabilitation.

Response

The Draft EIS provided a comparative analysis of environmental impacts for each alternative. The Draft EIS described these impacts for each alternative as a whole, but did not provide a comparison of impacts for each community. This Final EIS provides further analysis of the alternatives, particularly the bypass alternatives, to address specific public comments and concerns. SEA has included discussion of the "net" environmental impacts with mitigation in each of the Final EIS chapters describing environmental impacts (Chapters 3 through 9). The Chapter 12 includes a discussion of SEA's conclusions regarding the potential impacts and mitigation. The Final EIS includes a discussion of the total impacts to wetlands and waterways in Chapters 3 and 4. The amount of cut and fill for each alternative is described in the relevant chapters (Chapters 3 through 9).

Factor:

0

Restatement 007639 6

Several commenters provided statements on the identification of the preferred alternative in the Draft EIS. One commenter said the Draft EIS and DM&E' permit application to the Army Corps of Engineers were not clear whether Alternative B or Alternative C is DM&E' preferred alternative. The location and size of proposed sidings and yards varies substantially for the two alternatives.

Similar

One commenter said that the term "environmentally preferable alternative" has been misconstrued throughout the Draft EIS and identification of any alternative other than the No-Action Alternative as environmentally preferable is unsupportable. According to CEQ guidelines, the "environmentally preferable alternative" is the alternative that causes the least damage to the biological and physical environment. Safety and economic viability are not factors that should be considered when determining the environmentally preferable alternative. There are substantial adverse impacts from all of the action alternatives, so the environmentally preferable alternative can only be the No-Action Alternative. The commenter said the Board should revise the EIS to more clearly distinguish the environmentally preferable alternative from an action alternative that may be the Board' preferred alternative.

Two commenters clarified the Department of Interior agencies" position on the preferred alternative. The Executive Summary of the Draft EIS incorrectly indicated that Alternative C is the preferred alternative for the U.S. Forest Service. Alternative A, No-Action, is the preferred alternative for the Forest Service and the Bureau of Reclamation. If the Board selects an action alternative, the Forest Service' preferred alternative is Alternative C. The Bureau of Reclamation prefers routes that avoid crossing the Angostura Irrigation District and opposes the WG Divide option. In the event that the Board selects Alternative C, with the WG Divide option, the Bureau of Reclamation has entered into discussions with DM&E to ensure that DM&E fully mitigates potential impacts associated with that route.

Response

As described in the Draft EIS, the Applicant's preferred alternative is Alternative C. SEA believes that it accurately characterized the Forest Service's preferred alternative in the Draft EIS; however, SEA acknowledges the clarifications from the Department of Interior regarding the agencies' positions on the environmentally preferable alternative. In the Draft EIS, SEA described that the No-Action Alternative would likely have impacts to rail safety, the farm economy, and truck traffic on the roadway system. Based on the analysis of alternatives described in the Draft EIS and additional information provided in the Final EIS in response to public comments, SEA determined that if the Board approves the proposed project, Alternative C, with SEA's recommended mitigation, is the environmentally preferred alternative.

Errors in the Draft EIS, and corrections to them, are addressed in Appendix A.

Factor: 0

Restatement 007540 1

Several commenters said that the Draft EIS did not provide any analysis of the impacts of transporting coal from the project terminus to the ultimate customers. The commenters said the Draft EIS did not adequately identify the transfer of coal at the eastern terminus near Winona, MN and did not evaluate the potential impacts of constructing or operating transfer facilities or operating impacts of additional transportation, particularly and barge transfer facilities or barge-related impacts.

Response

In the Draft EIS, SEA evaluated the potential environmental impacts from three possible levels of rail traffic through the eastern terminus of DM&E's existing line. SEA's evaluation of the East Yard also discussed the transfer of coal traffic to other carriers at that yard. No other new transfer facilities are proposed as part of the proposed project. Based on the public comments on the Draft EIS, SEA conducted additional evaluation of the potential environmental impacts at the eastern terminus of the proposed DM&E expansion. This additional information is described in Chapter 10 of the Final EIS and includes a discussion of the potential for changes in coal barge traffic.

Factor: 0

Restatement 007559 1

Several commenters provided comments regarding the Mankato Existing Route Alternative. Commenters stated that Alternative M-3 is not the environmentally preferred alternative. This alternative should be eliminated from further consideration. The Draft EIS described significant impacts of this alternative. Commenters said the Army Corps of

Engineers has not completed a detailed analysis of the impacts to flood control project in Mankato so the impacts of the M-3 Alternative to flood control are unknown. Because the Draft EIS stated that the impacts of the M-2 Alternative are mitigatable and there is no corresponding statement regarding the M-3 Alternative, the City of Mankato assumes that the impacts of M-3 are not mitigatable or mitigation is not feasible for the M-3 Alternative. The Board should monitor any potential negotiations between UP and DM&E regarding improvements to the M-3 route without environmental review or regulatory oversight. Such an agreement would result in a de facto M-3 Alternative that was not disclosed in DM&E' application or contemplated in the Draft EIS.

Response

As described in Chapter 7 of this Final EIS, SEA determined that the Southern Route Alternative (M-2) is the environmentally preferred alternative for the project in the Mankato area if the Board approves the proposed project. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, but will recommend alternative, M-3, should that route become feasible.

Factor:

0

Restatement

000025

3

Several commenters stated that the evaluation and discussion of the No-Action Alternative in the Draft EIS was inadequate, incomplete, or biased. One commenter stated that the Board' analysis of the No-Action Alternative is biased and based too heavily on information from DM&E. Two commenters said the Draft EIS discussion about alternatives appeared to be predetermined because it includes statements not related to environmental impacts. For example, the Draft EIS stated that the No-Action Alternative does not advance the applicant' goals.

Several commenters said there is no basis for a conclusion that the existing rail line will deteriorate as a result of the No-Action Alternative. In examining the No-Action Alternative, the Board should consider the needs and size of the shipper economy that would be affected under the No-Action Alternative, compared to the more substantial non-shipper economy that would be affected by the action alternatives. Actual benefits to the shipper community should be compared with actual costs to other businesses and local government. The mitigation described in the Draft EIS for the community impacts was meager and costs were not quantified. The Board should look at other financial alternatives to preserving the railroad if the impacts of the No-Action Alternative are severe. The EIS should include economic studies and analysis that support the economic assumptions made about the impacts of the No-Action Alternative.

Another commenter said that the Board statements regarding negotiated agreements between DM&E and communities indicate that the Board is not seriously considering the No-Action Alternative. If the Board relies on negotiated agreements for mitigation, what mitigation will there be for rural areas, rangelands, air impacts, and other impacts that are not directly related to a community?

Response

The Draft EIS included a complete and objective evaluation of the potential environmental impacts of the No-Action Alternative. During the environmental review process, SEA considers, reviews, and verifies information provided by DM&E. As part of SEA's preliminary conclusions in the Draft EIS, SEA described that the No-Action Alternative would not meet the applicant's stated project purposes.

The Board considered the transportation impacts of the proposed project and the No-Action Alternative in its December 1998 decision approving the transportation merits of the project, pending completion of the environmental review. In its decision, the Board reached several conclusions about the viability of DM&E if the proposed project were

not approved (See Appendix A of the Draft EIS) SEA's final recommended mitigation in Chapter 12 provides a total cost estimate for mitigation.

SEA includes mitigation in its final recommendations to address potential environmental impacts in areas that are not covered by negotiated agreements. Chapter 12 describes SEA's recommended environmental mitigation. The Board encourages the development of negotiated agreements between the applicant and affected communities, including groups of communities and other entities such as state and local agencies. Generally, these privately negotiated solutions between an applicant railroad and some or all of the communities along particular rail corridors or other appropriate entities are more effective, and in some cases more far-reaching, than any environmental mitigation options the Board could impose unilaterally if it grants approval to a particular rail construction project. Therefore, when such agreements are submitted to it, the Board generally will impose these negotiated agreements as conditions to approved applications, and these agreements generally will substitute for specific local and site-specific environmental mitigation for a community that otherwise would be imposed.

Factor: 0

Restatement 000021 4

Several commenters said the EIS should examine other ways of accomplishing the energy and electricity needs. One commenter said that coal is not a reliable energy source for the long term, as stated in the Draft EIS. Specifically, commenters suggested the following energy alternatives:

- ; Energy diversification
- ; Energy conservation
- ; Cleaner energy alternatives or renewable energy sources, such as natural gas, wind power, solar power, and other forms of green energy
- ; Mine mouth electricity generation
- ; Coal gasification

Response

SEA did not evaluate alternative energy programs or projects because these types of programs would not meet the project purpose. Therefore, SEA considers these suggested alternatives not to be reasonable alternatives to the proposed action. SEA provided information about coal use in the Draft EIS to expand and clarify the information provided by DM&E on the need for the project. In Chapter 2 of this Final EIS, SEA provides additional updated information on coal demand and the demand for coal transportation from the Powder River Basin.

Factor: 0

Restatement 000020 10

Several commenters provided comments on the existing route. Several commenters stated that the Board should select the existing route through Rochester as the preferred route. This route minimizes impact to habitat, including wetlands, groundwater seeps, springs, fens, and hilly wooded areas and utilizes existing tracks. If a bypass route is selected, the Board should coordinate closely with the U.S. Fish & Wildlife Service to develop an appropriate mitigation plan. Another commenter suggested the construction of an overpass at East Circle Drive and an underpass at 2nd Avenue, Northeast in Rochester.

Response

As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 9 includes a complete description of the evaluation and the rationale for SEA's determination.

Factor:

Restatement 007536 20

Several commenters stated that the Board should reexamine a bypass for Pierre, SD and that the Board dismissed the proposed Pierre bypass with only a cursory review. The commenters said that the Board should take a "fresh look" at the Pierre bypass proposal.

The commenters stated that Board erred when it did not accept the Pierre bypass proposal. The Draft EIS analysis and screening of the Pierre bypass was inadequate. Commenters stated that, in a short paragraph, the Draft EIS dismissed the Pierre bypass as unreasonable because it would have environmental and engineering constraints, require a new bridge, cuts and fills, and potentially affect cultural resources. This cursory review is not consistent with NEPA guidance that agencies take a "hard look" at alternatives. SEA based its conclusion, in part, on the potential impacts of a new bridge on navigation. The depth of the river at the crossing location is such that the only navigation at that point in the last 60 years has been pleasure craft. The Draft EIS did not provide any evidence of the presence of important cultural resources on the Pierre bypass route. The Draft EIS did not support claims that the Pierre bypass is infeasible because it has "significant engineering and environmental constraints."

SEA did not apply its criteria for accepting bypass alternatives consistently when considering bypasses at Pierre, Brookings, and Rochester. SEA concluded that none of the substantial impacts of the Brookings and Rochester bypasses would make those alternatives infeasible or unreasonable. The Pierre bypass proposal is shorter and more efficient than the existing route. The Rochester Bypass Alternative is 10.8 miles longer than the existing route. The Board should take another look at the proposed Pierre bypass and issue a supplemental environmental review

One commenter said that DM&E offered up to \$40 million for construction of the bypass and the City of Pierre is seeking other sources of funding. Another commenter said that the EIS should evaluate the impacts to the potential restriction of movement of state employees between offices on either side of the track in Pierre.

Commenters suggested that the Board should select a route that does not go through Pierre, SD and that the Board should condition approval of the DM&E proposal on construction of the Pierre bypass, funded jointly by DM&E and the City.

Response

In response to the public comments regarding the Pierre Bypass, SEA completed an evaluation of the Pierre Bypass Route at the same detail as the evaluation of bypass alternatives for other communities. As described in Chapter 5, SEA determined that the existing route through Pierre, with appropriate mitigation, is the preferred alternative, if the Board approves the proposed project.

Factor:

Restatement 003329 1

Several commenters provided comments on the description and evaluation of the Mankato Southern Route Alternative (M-2). Commenters expressed concerns about incomplete, inaccurate, and insufficient information and analysis of the alternative for Board to make an informed decision.

Commenters stated that the Draft EIS did not contain sufficient information regarding the M-2 Mankato Southern Route Alternative to be considered a viable alternative to the M-1 (no build) and M-3 (existing route) alternatives. The route described on pages 2-55 and 2-56 does not match the route depicted in Figure 2-17. Figure 2-3 is not sufficiently detailed and does not show the location of Blue Earth County Highway 90. Maps 48, 49, and 54 through 57 provide additional detail, but do not show mileposts.

Similar

Commenters stated that the Draft EIS did not mention Skyline as a community affected by the Southern Route Alternative (M-2). The actual route would be on the east side of the Blue Earth River. This discrepancy and the failure to note significant features that would have to be addressed (e.g., the Blue Earth River and Mt. Kato Ski Area) indicates that the Board did not conduct a site visit on the route as described on page ES-2. The route on the west side of the river would destabilize the bluff upon which the city of Skyline is located. The DM&E has conducted limited engineering review of the M-2 Alternative, so it does not meet Board' criteria for evaluation of bypass alternatives. The route would require substantial engineering to accomplish, including substantial cuts and fills and numerous trestles and overpasses. The Southern Route Alternative would be detrimental to the rural area. The Draft EIS was not clear which route is evaluated for each impact. The Board should conduct a field examination of the route.

Commenters said the M-2 Southern Route Alternative will merely transfer impacts from one area to another, violate the Board' preference for using existing routes, destroy the peace and tranquility of the Blue Earth River Valley, prevent the City of Mankato from expanding southward, have a disastrous effect on the City of Skyline. The M-2 Alternative would have substantial impacts on woodlands, wetlands, grade crossing safety, homes and residential land, the Mt. Kato ski area, the Hillcrest nursing home, scenic values of the Blue Earth Valley, and Lehillier, an economic justice community.

Commenters stated that, given the inaccuracies of the Draft EIS and inadequate engineering evaluation, the conclusion that this southern route would have fewer impacts to human resources and is the environmentally preferred alternative is not supported by the data. The M-2 Alternative would result in substantial environmental and human impacts to Skyline Bluff, the Blue Earth River, the City of Skyline, and the Township of Mankato. The EIS must provide an accurate description of the route and evaluate the impacts of the corrected route, including impacts to the City of Skyline and eight houses on the east side of the river. The M-2 route is not a viable alternative.

Commenters stated that the Draft EIS did not discuss the amount of traffic that would remain on the rail line through Mankato, if the Southern Route were constructed. Likewise, the Draft EIS did not discuss any planned improvements or possible abandonment of any portions of the existing route through Mankato. The Draft EIS erred in assuming that the existing route would not be used if the M-2 Alternative is constructed. The Draft EIS did not include impacts that would result from increased traffic on the existing route (M-3) in the analysis of the M-2 Alternative. DM&E states that service will improve to existing shippers and it will exchange coal traffic with UP over M-3 to reach new customers, so traffic will increase on the existing route, which should be included in the impacts of the M-2 Alternative. The comparison of alternatives in the Draft EIS further erred in assuming that there is no existing impact on either the M-2 or M-3 alternatives. The Final EIS should consider the change in impact for each alternative, considering the existing impacts to homes and businesses along the existing route.

The M-2 Alternative is not a viable route because DM&E has no intention of using the route. DM&E' preferred route is M-3. If the Board orders construction of the M-2 route and UP continues improvements to its route, there is a real possibility that the M-2 route would be abandoned in the future. The Board should drop consideration of the M-2 route.

Response

As described in Chapter 7 of this Final EIS, SEA has conducted a thorough evaluation of the Mankato Southern Route Alternative (M-2). Based on this evaluation, SEA determined that the Southern Route Alternative is the environmentally preferred alternative if the Board approves the proposed project. The evaluation in Chapter 7 discusses additional information for the route and the potential impacts to the City of Skyline. A technical report containing and addressing SEA's additional evaluation on Mankato is found in Appendix M of the Final EIS. Chapter 7 also includes a detailed description of the route and the potential environmental impacts. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reached an agreement for construction of the M-3 Alternative, SEA believes it would be environmentally preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-3 Alternative, if UP and DM&E reach an agreement. Therefore, SEA is recommending M-2, however in the event that alternative M-3 should become feasible, the M-3 route would be the preferred Alternative.

Factor:

Restatement 003661 1

DM&E has described its plans to use the I&M Rail Link rail line to haul coal north and south from Owatonna, MN. The Board should inform the affected communities, evaluate the potential impacts to communities along this rail line, and make the evaluation available for public review.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

Factor:

Restatement 000227 11

Several commenters stated that the Draft EIS did not evaluate a sufficient range of alternatives, including the use of existing DM&E corridors. The commenters stated that the Board eliminated options through Nebraska based on DM&E's statements that they are not feasible, without an independent evaluation of the environmental impacts. The commenters also noted that the Draft EIS did not include data supporting conclusions that these alternatives are not feasible. The Board should conduct an independent analysis of feasible alternatives.

Another commenter suggested that the Board evaluate the use of existing DM&E rail lines between Wasta and Smithwick, SD. The commenter noted that the EIS should compare the increases in trip cost on this route to the likely costs associated with interrupted service from landslides and slumping banks on Alternative C.

Response

The Board considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. SEA considered alternative rail routes that would use other portions of DM&E's existing rail system. Chapter 2 of the Draft EIS describes SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). As the commenters noted, SEA concluded that these alternatives were not reasonable and feasible alternatives to meet the project purpose and need. This determination was based on an independent evaluation of DM&E's rail system and operating information during preparation of the Draft EIS.

Some of the alternatives SEA evaluated in the Draft EIS routed traffic over DM&E rail lines into Nebraska. As described in Chapter 2 of the Draft EIS, SEA determined that only one of the existing corridor routes warranted detailed environmental evaluation (Alternative D-7, which was designated as Alternative D). Alternative D would not operate over rail lines to Nebraska. SEA determined that the other routes were not reasonable alternatives to the proposed project and eliminated them from further consideration.

For the portion of the DM&E rail system between Wasta and Smithwick, SD, SEA determined that this section is not suitable for coal traffic without substantial modification to the existing route. The Draft EIS described this situation and described the potential environmental impacts of operating over this segment. In Chapter 3 of this Final EIS, SEA provides additional discussion of the potential impacts of modifying this portion of the rail system to accommodate coal trains. Based on the evaluation in the Draft EIS and further discussion in the Final EIS, SEA determined that this alternative was not a reasonable alternative to the proposed project.

Factor:
Restatement 002331 6

Several commenters stated concerns about the evaluation of the Brookings Bypass and comparison with the existing route. One commenter said the shorter Brookings bypass proposal by Railco has similar problems as other bypass proposals, such as safety and farmland access. Commenters said that the Board should scrutinize the cost comparison between the existing route and the Brookings Bypass Alternative. Even with the Brookings bypass, the existing route would have to be upgraded to serve existing shippers. The bypass would result in higher operating costs due to the longer route. In considering the relative costs, commenters said that the Board should include the cost of adequate mitigation for each option and that the City's cost comparisons do not compare the options equally. The Board should focus on making the existing route as safe as possible. One commenter said that train congestion relief in downtown Brookings is not a reason for constructing a bypass.]

Response

SEA reviewed and evaluated the Brookings bypass alternative and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. Chapter 6 includes a description of SEA's evaluation and the rationale for its determination of the environmentally preferred alternative.

Chapter 12 describes SEA's recommended mitigation for the proposed project, if approved by the Board.

Factor: 0

Restatement 000234 8

Several commenters provided specific comments on the evaluation of the Hay Canyon Alternatives in the Draft EIS. One commenter said the Draft EIS underestimated the wetlands impacts of the WG Divide Alternative. The commenter added that, by inviting comments on the alternative, the Draft EIS indicated that the Board is still conducting scoping. 49 CFR 1502.14 (e) requires the Board to identify a preferred alternative.

Regarding the Draft EIS statement that the WG Divide Alternative is not likely to pose a significant impact to water resources, a commenter noted that although the route only crossed the Cheyenne River once, the entire route runs the length of the watershed. The commenter also asked how many times the Hay Canyon Alternatives crossed the Cheyenne River.

One commenter noted that Volume VIII-B discusses only the WG Divide Alternative. Since the Board has stated that there are no viable alternative routes between Smithwick and north of Cheyenne, this volume should include discussion of all alternatives, including the Hay Canyon and Oral Alternatives. The commenter also noted that the Draft EIS description and labeling of the Hay Canyon Alternatives was confusing. For example, on page 4-127 of Volume VIII-B, the Draft EIS figures (references Table 5-54) only show Alternatives B and C, and the WG Flat Route Segment, while in other volumes, the Board asks the public to comment on the Hay Canyon Alternatives, which include the Hay Canyon Segment, the WG Flat Segment, and the Oral Segment. The commenter added that the titles and figures are not consistent. In Section 4.6.2.5.3, the Oral Segment is listed as 30 acres of right-of-way. In this section it is called Alternative B and requires 229.3 acres. The WG Divide Route is called variously the "Divide Route," the "WG Flat Alternative Alignment," the "WG Flat Route Variation," the WG Divide Alternative," or the "WG Flat Segment."

One commenter noted that Table 6.4 is an overview of the Hay Canyon Alternatives, not the Spring Creek Alternatives as stated on page 6-26 (Volume IV).

Response

The Draft EIS provided a comparative evaluation of the Hay Canyon alternatives. SEA and cooperating agencies requested public comments on the alternatives comparison to ensure that the evaluation was complete and accurate. Based on this evaluation and additional information described in Chapter 3, SEA determined in the Draft EIS that the WG Divide Alternative is the environmentally preferred alternative, if the Board approves the proposed project.

Volume VIII-B (Appendix L) includes a discussion and evaluation of the WG Divide, Oral Segment, and Hay Canyon Alternatives. SEA described the crossings of the Cheyenne River and the potential impact to water resources in Sections 4.4.7 and 4.6.3 of the Draft EIS. SEA refers to the WG Divide Alternative in the Draft EIS, but other agencies used different terminology in Volume VIII-B. SEA interpreted the descriptions of impacts prepared by other agencies to ensure that the Draft EIS fully described the potential impacts for the WG Divide Alternative.

Errors in the Draft EIS and corrections to them are addressed in Appendix A.

Factor:

0

Restatement

000244

1

Several commenters provided comments on the extent of public scoping for the Hay Canyon route alternatives. Many of these commenters were concerned that the Board and some cooperating agencies developed the WG Divide Alternative after public scoping and before the Bureau of Reclamation became a cooperating agency. Commenters were concerned that the WG Divide route is as environmentally sensitive as the Hay Canyon and Oral Alternatives and the public did not have an opportunity to identify issues. One commenter said that this route is now DM&E' preferred alternative, yet no scientists have visited the route and no one has contacted landowners. Other commenters said that page 6-26, line 10 of the Draft EIS indicated that the cooperating agencies participated in developing an alternative to avoid or minimize impacts to Hay Canyon. The Board should revise this description because the Bureau of Reclamation was not provided an opportunity to participate in the development of the WG Divide Alternative.

Response

In response to comments from the U.S. Fish and Wildlife Service, SEA and the cooperating agencies, except for the Bureau of Reclamation, coordinated with DM&E to develop the WG Divide Alternative. The agencies developed this alternative to avoid sensitive wetlands and riparian habitat along the Cheyenne River and Hay Canyon.

Upon development of the WG Divide Alternative it was determined that an easement would be needed to cross a federal irrigation project. At this point the Bureau of Reclamation was asked to participate as a cooperating agency on this EIS. DM&E consulted with the Bureau of Reclamation during development of mitigation and continues to consult with the Bureau on potential mitigation plans. Although the agencies developed the alternative before the Bureau of Reclamation became a cooperating agency, all of the cooperating agencies, including the Bureau of Reclamation, participated in conducting the environmental review and in preparing the Draft EIS.

The initial cooperating agencies conducted a thorough evaluation of the alternative, including site visits to the route and a comparison of environmental impacts with the other alternatives.

Factor:

0

Restatement

000293

2

Several commenters supported the selection of the Mankato Southern Route Alternative (M-2). Commenters noted that the Board should select the Mankato Southern Route Alternative, using land along County Road 90. [293 #2; 480 #1] Another commenter said that the Board should examine the recent environmental record and subsequent legal

challenges for the approval of the transportation route adjacent to the M-2 Alternative to confirm that the environmental impacts identified in the Draft EIS for this case are similar and that the other project did not identify any unique or unmitigatable impacts along the other corridor.

Response

As described in Chapter 7, SEA determined that the Southern Route Alternative (M-2) is the environmentally preferred alternative for the project in the Mankato area if the Board approves the proposed project. SEA reviewed and considered the environmental review for County Highway 90.

Factor: 0

Restatement 007540 5

One commenter expressed concern for the proposed project to operate over karst topography.

Response

SEA acknowledges the problems associated with the karst topography in the study area. A further discussion of this is found in Chapter 9 of this Final EIS. SEA is not recommending any bypass alternatives, in part, because of the presence of the karst topography.

Factor: 0

Restatement 007548 11

Several commenters expressed support for the proposed Brookings Bypass Alternative and the shorter, revised bypass developed by the City of Brookings. In their comments, the City of Brookings supported the Brookings Bypass Alternative and offered two alternatives that would further improve the bypass option. Commenters stated that the City' Alternatives B-4A and B-4Aa are reasonable and feasible bypass options that are shorter and less expensive to build than other bypasses. The revised bypass options would result in less impact to area residents for noise, vibration, safety, traffic delay, emergency response, pedestrian safety, air quality, and economic development. The options would also improve train operations during construction and for future operations.

Commenters stated that the Board should examine the revised Brookings bypass in the Final EIS. DM&E and the City of Brookings are negotiating an agreement regarding this bypass. The State of South Dakota has offered its right-of-way along Route 14 and the Route 14 bypass to DM&E and the State will fund a grade separation at Interstate 29. Some commenters said that the Board should require the shorter Brookings bypass as a condition of project approval.

Response

SEA acknowledges the comments supporting the Brookings Bypass. As described and explained in Chapter 5 of this Final EIS, SEA is not recommending the Brookings Bypass as mitigation for potential environmental impacts of the proposed project.

Factor: 0

Restatement 000736 1

Several commenters stated that the Board should not accept the revised Brookings bypass alternatives for consideration after the Draft EIS was published. The Board established procedures for evaluating bypass options in the scoping process, which the Board should adhere to. Allowing a new proposal at this stage would result in additional analysis and delay.

One commenter said the City of Brookings has proposed that the City control the train traffic and right-of-way along the existing route and the proposed bypass. This proposal is contrary to law and precedence.

Other commenters said that DM&E has offered adequate mitigation on the existing route so there is no demonstrated need to relocate the traffic to a bypass route, which would only transfer the impacts from one community to another. The Draft EIS was not clear if the City of Brookings will pay for the two grade-separated crossings of Highway 14 and other mitigation requirements listed in the Draft EIS. Some commenters said the City should pay the entire cost of the bypass. Several commenters said that the City of Brookings has not discussed its shorter bypass proposal with the community.

Commenters stated that the Board should not allow submission of the new proposal after the Board deadline and reject the existing proposal on its merits (legal, engineering, and others). Commenters also stated that the City should prepare an application before the Board for construction and operation of the City's bypass proposal. Without such a process, the Board will not protect the property owners' rights for due process.

Response

As described in Chapter 6 of the Draft EIS and Chapter 6 of the Final EIS, SEA evaluated the original proposed Brookings bypass and determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred alternative if the Board approves the proposed project. As part of its review of the public comments on the Draft EIS, SEA also reviewed and considered the information provided by the City of Brookings regarding a modified bypass alternative and determined that the existing route through Brookings is the environmentally preferred alternative. Chapter 6 includes a complete description of SEA's evaluation and the rationale for its determination.

Factor:

0

Restatement

000527

5

Several commenters stated that the Board did not take a "hard look" at various alternative rail routes as required by NEPA. The commenters said the Draft EIS did not discuss a sufficient range of alternatives or examine viable alternative routings for coal traffic that would avoid many of the communities that would be affected by the proposed project. One commenter said DM&E' statement that none of the existing corridors are acceptable is not credible. The Board should require what is necessary to address environmental impacts.

Several commenters suggested specific rail corridors through South Dakota and Minnesota that the Board should consider and evaluate as alternatives to the proposed project. Specifically, the Board should evaluate the following routes:

In South Dakota, an abandoned former Milwaukee Road right-of-way owned by the state runs from Rapid City through Kadoka to Chamberlain and Mitchell. The line is an active railroad operated by the State between Kadoka and Mitchell and by BNSF east of Mitchell. The line connects at Mitchell and Canton with other BNSF or UP operated lines.

In Minnesota, DM&E could use (or acquire) the UP secondary line from Mankato to the Twin Cities, bypassing Owatonna and Rochester. East of Mankato, DM&E could use its line from Waseca to Albert Lea to Illinois Central' former Cedar Valley line, which connects to other routes to Chicago. Both of these routes would move coal traffic to the east, reduce traffic on the DM&E line, and bypass Owatonna and Rochester.

Response

The Board considered numerous alternatives to the proposed DM&E expansion during preparation of the Draft EIS. SEA considered alternative rail routes that would use other existing rail corridors, including the Milwaukee Road. Chapter 2 of the Draft EIS describes SEA's rationale for eliminating all but one of these alternatives from further evaluation (Alternative D). SEA concluded that these alternatives were not reasonable and feasible alternatives to meet the project purpose and need, in part because these alternatives would require more new construction than the proposed project or would not achieve DM&E's purpose of providing a shorter, more competitive route to the Powder River Basin. Regarding suggested routes that would use or acquire railroad lines owned by other railroads, SEA does not consider these alternatives to be reasonable or feasible alternatives because the Board does not have the authority to order DM&E to operate over the rail lines of another carrier. Implementation of this alternative would require a negotiated trackage rights agreement between DM&E and any other railroad over which DM&E wanted to operate.

Factor: 0

Restatement 002645 1

Several commenters stated that the Board did not evaluate a sufficient range of alternatives. The commenters suggested alternate rail corridors that Board should consider for new rail construction. One commenter said the Board should examine alternatives that do not pass through communities. If this railroad were just being built today, the Board would not route the traffic through the downtown areas. Other commenters suggested that the Board should evaluate alternatives, such as along Interstate 90, which would avoid the Minnesota/Blue Earth River Valley and Minneopa State Park.

Response

SEA evaluated a full and reasonable range of alternatives in the Draft EIS, in compliance with NEPA requirements. Chapter 2 of the Draft EIS discussed SEA's evaluation of alternative routes, including major route alternatives for the new construction and bypass alternatives to avoid certain larger communities along the existing DM&E rail line. The Draft EIS provided a thorough description of the potential environmental impacts of the alternatives evaluated. SEA did not evaluate an alternative that would construct a new DM&E main line adjacent to Interstate 90. SEA does not consider this a reasonable or feasible alternative because it would require substantial new construction, at a greater cost, in areas removed from DM&E's existing customers.

Factor: 0

Restatement 007547 30

One commenter was concerned about mitigation to protect groundwater resources from pollutants.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. The technical appendix of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on groundwater resources from the proposed project.

Factor:

Restatement 007564 30

One commenter said the Draft EIS did not describe the potential impacts of the alternative siding locations in Olmsted County. The Draft EIS also did not describe how these potential siding locations could change with approval of the bypass alternatives (R-3 or R-4). Potential impacts from the sidings could include increased noise and vibration from simultaneous train operation and traffic delay if train speeds cannot be maintained on the sidings. A commenter said the Final EIS should provide clarification as to the criteria for locating the sidings. These criteria should include consideration of no-build zones in areas near sidings. It does not appear that DM&E applied the criteria described in the Draft EIS (sidings of 3 to 7 miles in length and spacing of 12 to 25 miles) in eastern Minnesota.

Response

As described in Chapter 9, SEA's evaluation of route alternatives through the Rochester area determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the proposed project. In Appendix I of the Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.

It should be noted that although trains operating on sidings may potentially increase noise levels, this operation does not necessarily take place at the same time as trains operating on the main line. As the timing of siding operation is impossible to determine, it is inappropriate for SEA to add siding operation noise to mainland operating noise in its analysis. Siding noise cannot necessarily be considered additive.

Factor: 0

Restatement 007711 1

One commenter expressed opposition to the proposed bypass near the City of Dover.

Response

SEA acknowledges the concern of citizens for bypass operations. No bypass alternative is recommended by SEA as part of this proposal.

Factor: 0

Restatement 007768 5

One commenter stated that the Board should not consider community survey results from Brookings. Some survey results are outdated and based on inaccurate information provided to the public. If the Board is going to rely on surveys, the Board should use a new survey designed jointly by opponents and proponents of a bypass.

Response

SEA entered community surveys into the environmental record in this proceeding, but based its evaluation of the potential environmental impacts of the alternatives routes through or around Brookings on a variety of sources, including site visits. With this Final EIS, SEA is providing all of the available information, including surveys, petitions, and comments on these surveys, to the Board for review and consideration in its final decision.

Topic: T17-Water Resources
SubTopic: T17A-Wetlands
Factor: F01D-Alternatives - Owatanna Connections

0

Restatement 007625 87

Owatonna alternatives O-2 and 0-3 have the potential to affect several farmed wetlands, which should be identified and mitigated.

Response

Discussion of the Owatonna Alternatives can be found in Section 3.4 of the Draft EIS. Further discussion and analysis of the alternatives and impacts to farmed wetlands can be found in Chapter 8 of the Final EIS. Based on this evaluation, SEA has determined that Alternative O-4 is the preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the preferred alternative, if it were a feasible alternative. The alternative is not feasible because agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative.

Factor: F02D-Analysis - Mitigation

0

Restatement 007625 87

Owatonna alternatives O-2 and 0-3 have the potential to affect several farmed wetlands, which should be identified and mitigated.

Response

Discussion of the Owatonna Alternatives can be found in Section 3.4 of the Draft EIS. Further discussion and analysis of the alternatives and impacts to farmed wetlands can be found in Chapter 8 of the Final EIS. Based on this evaluation, SEA has determined that Alternative O-4 is the preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the preferred alternative, if it were a feasible alternative. The alternative is not feasible because agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative.

Factor: F02C-Analysis - Methods

27

Restatement 007546 90

One commenter noted the failure to use standardized methods to identify jurisdictional wetlands along the path of the upgrade alternatives. Minimal requirements were not met in the Draft EIS or in the 404 application. The public and wetland regulators are unable to verify or predict wetland impacts and are unable to evaluate whether any of the proposed alternatives will adversely impact ecosystems, water quality or groundwater interactions. Another commenter stated that the MPCA 401 Water Quality Certification and the Draft EIS should contain accurately delineated wetlands, using the necessary means to achieve that, rather than using different sets of data.

Another commenter noted that the Draft EIS stated that there are approximately 53.2 acres of jurisdictional wetlands within the right-of-way of the proposed Rochester Alternative, but did not identify the method for determining the wetland impact. The commenter stated that the calculation is too low, and it does not account for hydrologic alterations within the right-of-way that may drain adjoining wetlands and divert surface water flows.

Another commenter stated that no project can receive final approval until wetland permits are received from Federal, state and local wetland regulators. No permit applications have been submitted to the Corps of Engineers, Minnesota Pollution Control Agency, or the local government units responsible for wetland permitting in Minnesota. Another

11/15/2001

Similar

commenter stated that a wetland mitigation plan has not yet been submitted for the project. One commenter stated that there is no discussion of possible conflicts between the proposed Federal action and the local land use plans. Another commenter stated that the national public interest for DM&E's expansion has not been established.

Response

SEA used National Wetland Inventory (NWI) maps and the most recent data available in wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. Wetlands delineation will be completed as part of the COE 404 permit application process. The Omaha District and field office staff verified the wetland and waters delineation completed by DM&E. Site visits were accomplished in:

Eastern South Dakota (8/19/99)

Wyoming (10/25-26/99)

Western South Dakota (7/25-28/00)

Eastern South Dakota (8/1-2/01 to determine the impact of U.S. Supreme Court's SWANCC v. COE decision on jurisdiction)

Western South Dakota (8/23-24/01 to compare NWI data to delineation)

While some revisions were made to the delineation during these visits, acreage changes were not significant.

The St. Paul District believes the level of detail on wetland identification provided in the 404 application is adequate to review the proposal. Information provided in the 404 permit application met the requirements for a determination of a complete application as required under 33 CFR 325.1(d). These details included a combination of National Wetland Inventory map review; interpretation of aerial photographs; and field reviews. Use of off site delineation methodology is allowed in the Corps 1987 delineation manual. Further site reviews may be necessary in specific locations to determine whether all reasonable efforts are being made to avoid and minimize wetland impacts.

It has been generally considered that all wetlands within the railroad ROW would be impacted by the project. The Corps review will also consider secondary impacts, such as those attributed to drainage and/or inundation that may occur beyond the ROW.

Permit applications have been submitted to the Corps, the Minnesota Pollution Control Agency and State/local agencies in Minnesota.

SEA acknowledges that there may be some impact to wetlands outside the immediate project area which have not been quantified. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

SEA is required by NEPA to prepare a Draft and Final EIS for the proposed project to disclose and analyze potential environmental impacts. If the Board approves the project, DM&E will obtain all appropriate Federal, state, and local permits prior to construction. SEA requires that the proposed project may not be consistent with all state and local plans. However, Board authorization to construct and operate the DM&E project would preempt local ordinances.

Chapter 12 of the Final EIS describes SEA's recommended mitigation to address concerns about impacts to wetlands. The national public interest for DME's expansion was discussed in Chapter 1 of the Draft EIS and is further discussed in Chapter 2 of the Final EIS. The Board will consider this information and the public comments in making its final decision on the project. SEA has identified and corrected errors in the Draft EIS in Appendix A (Draft EIS errata) of the Final EIS. SEA has forwarded all comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

11/15/2001

Similar
0

Factor: F01G-Alternatives - Rochester Bypass

Restatement 007625 77

One commenter stated that if alternatives R-3 or R-4 are selected, field based delineation of wetlands would be required as the National Wetlands Inventory tends to underestimate acreage.

Response

Discussion of the Rochester bypasses can be found in Section 3.3 of the Draft EIS. Further discussion and analysis of the bypasses and delineation of wetlands can be found in Chapter 9 of the Final EIS. Based on this evaluation, SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

Factor: F02E-Analysis - Results

14

Restatement 008099 56

One commenter stated that the comment on page 4-29 about Alternative D that "no wetlands, deciduous riparian vegetation or woody draws would be affected on state lands" is incorrect. Alternative D would pass through and take more right-of-way and therefore more wetland and riparian areas on state land one mile south of Oral.

Another commenter stated that the bypass alternative near his home is considered a flood plain, which is an indication that the measured wetland has been misjudged. The commenter questioned whether any formal wetland audit of the proposed bypass route was performed. Another commenter noted that only 5% of the wetlands were actually delineated on the land in Volume III, Appendix, page 4, section 8.4. Another commenter noted that on Maps 115-119, on the Cheyenne River from MP606 to 621, DM&E plans construction near, on, or in the flood plain. This construction will result in an increase in sedimentation.

Another commenter stated that one reason for developing Alternative C is because of the impacts to wetlands along the Cheyenne River as a result of Alternative B. Section 4.4.7.2 on page 4.4-30 says otherwise. Alternative B has less impact to wetlands than Alternative C.

Response

DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application, wetlands delineation, and flood plain issues, and the COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

The St. Paul District will ensure that all wetland impacts associated with the M2 and M3 alternatives and the alternatives at Rochester and Owatonna are accurately evaluated in its permit review process.

Potential impacts to wetlands and features, such as the Indian Creek Project area and the Corps flood control projects at Mankato and LeHillier, will be considered during the Corps permit review. To date, the necessary information and testing to determine the potential impacts to the flood control projects has not been made available for Corps review.

General and special conditions will be included in any 404 permit to address revegetation needs, downstream water users, soil erosion and sediment control issues as they relate to impacts to waters of the U.S., as well as other activities that have the opportunity and ability to adversely effect aquatic resources.

SEA and the cooperating agencies developed Alternative C because of the impacts to wetlands for Alternative B. The development of Alternative C is discussed in Chapter 2 of the Draft EIS. Wetland impacts is not the only factor used in determining which alternative is the least environmentally intrusive. Many factors, including wildlife, geology, safety issues, etc. must also be considered in any determination. SEA acknowledges that there may be some indirect impact to wetlands outside the immediate project area due to changes made to the topography. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

The St. Paul District will require additional information regarding aspects such as wetland mitigation and impacts at the Mankato Flood Control projects prior to granting final construction approvals. In addition to the Corps general permit conditions, site specific mitigation may be required to address erosion or sedimentation concerns.

SEA considered the impacts of Alternative D in South Dakota in Chapter 4 of the Draft EIS. Based on the evaluation of Alternative D in the Draft and Final EIS, SEA determined that Alternative D is not a feasible alternative. Chapter 3 of the Final EIS includes additional discussion of the impact of Alternative D on wetlands in South Dakota.

Factor: F02D-Analysis - Mitigation

12

Restatement 007546 58

Commenters said that the proposed project could interfere with groundwater recharge. Commenters stated that groundwater recharge in the Decorah Edge hydrogeologic area, which is covered with glacial till, could be affected and that the project could also affect soils and vegetation from recharge waters. One commenter said the Final EIS needs to include mitigation for potential interference with groundwater recharge and pollutant attenuation.

One commenter said the Decorah Edge area provides 50 percent of recharge for Rochester' water supply and is part of a high priority groundwater recharge management area. The commenter said that the Decorah Edge hydrology has already received structural damage and has unstable roadbeds, slumping in road cuts, and foundation instability that would be further affected by the proposed project.

Another commenter said that nine percent of aquifer recharge in the Rochester area comes from streams and rivers that have headwaters in wetlands, springs and seeps along the Rochester Bypass. The commenter said that in order to properly evaluate the Bypass options, the Final EIS should examine surface and groundwater resources and recharge areas within two miles of the Bypass and the effects of the proposed rail line on these resources, list existing uses of water resources within two miles of the project area, and list permitting requirements for water protection in the project area.

Response

The Final EIS addresses potential environmental impacts to the Rochester area, including impacts to groundwater recharge from the Decorah Edge hydrogeologic area in Chapter 9 and in the technical appendix M. As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 12 lists SEA's recommended mitigation measures, including mitigation to protect groundwater resources.

Factor: F01C-Alternatives - Mankato Bypass

7

Restatement 007625 64

One commenter stated that the Draft EIS failed to provide details of wetland and water crossings for the Mankato bypass, although the Corps 404 permit application does.

Similar

However, information on water crossings was not included in the COE permit application for either Alternatives M-2 or M-3. Therefore, it is impossible to provide detailed comments on the natural resource impacts. 7625-64 The Draft EIS failed to note that the M-2 route would cross a portion of the City of Mankato's Indian Creek Project in Section 26, T108N, R27W, and that it crosses a tributary to the Le Sueur River in Section 27, T108N, R26W, which is a Minnesota Department Natural Resources public water.7625-68 Another commenter stated that the 404 application is deficient because it does not depict a large wetland impact associated with the proposed M-3 route that will occur in Section 5, Township 108 North, Range 26 West, and Section 32, Township 109 North, Range 26 West. According to the DM&E Track Layout Plans, a new main line will be constructed through 4700 feet of wetland in these sections. The impact is estimated at 4.25 acres, which may exceed the mandatory thresholds for an Environmental Assessment Worksheet because the impact area may be located within Minnesota River Project Riverbend. 7559-29,30 Another commenter stated that COE and DNR should withhold permits for the M-3 route until the city formally receives the DM&E application for wetland impacts, and until all matters regarding the Mankato Flood Control Project are resolved. 7559-33,34

Response

Discussion of the Mankato Alternatives can be found in Section 3.3 of the Draft EIS. Further discussion, analysis, and comparison of the environmental impacts of the alternatives can be found in Chapter 7 of the Final EIS. Based on this evaluation, SEA determined that the Southern Route Alternative (M-2) is the preferred alternative if the Board approves the proposed project. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reach an agreement for construction of the M-3 Alternative, SEA believes it would be preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-2 Alternative, as well as for the M-3 Alternative, if UP and DM&E reach an agreement. An additional analysis of wetlands and flood-control projects is found in Chapter 7 of this Final EIS.

Factor: F02A-Analysis - Data Accuracy

7

Restatement

007625

64

One commenter stated that the Draft EIS failed to provide details of wetland and water crossings for the Mankato bypass, although the Corps 404 permit application does. However, information on water crossings was not included in the COE permit application for either Alternatives M-2 or M-3. Therefore, it is impossible to provide detailed comments on the natural resource impacts. 7625-64 The Draft EIS failed to note that the M-2 route would cross a portion of the City of Mankato's Indian Creek Project in Section 26, T108N, R27W, and that it crosses a tributary to the Le Sueur River in Section 27, T108N, R26W, which is a Minnesota Department Natural Resources public water.7625-68 Another commenter stated that the 404 application is deficient because it does not depict a large wetland impact associated with the proposed M-3 route that will occur in Section 5, Township 108 North, Range 26 West, and Section 32, Township 109 North, Range 26 West. According to the DM&E Track Layout Plans, a new main line will be constructed through 4700 feet of wetland in these sections. The impact is estimated at 4.25 acres, which may exceed the mandatory thresholds for an Environmental Assessment Worksheet because the impact area may be located within Minnesota River Project Riverbend. Another commenter stated that COE and DNR should withhold permits for the M-3 route until the city formally receives the DM&E application for wetland impacts, and until all matters regarding the Mankato Flood Control Project are resolved.

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Factor: F03E-Process - Cooperating agencies policies, processes

Restatement 008673 5

The Corps of Engineers (COE) commented that it should be ensured that the proposed project is in compliance with flood plain management criteria of the appropriate city or county and the appropriate state. 62-1 One commenter stated that COE must be very thorough in analyzing all of DM&E's requests to alter any of the river or its tributaries along the entire 280 miles of new construction. The analysis should be on a site by site basis for each impact. One commenter stated that the recent decision of the U.S. Supreme Court limiting the ability of COE to regulate isolated wetlands may affect both the Draft EIS and the 404 process. Another commenter stated that there should be an expanded distribution of 404 application with additional public meetings. One commenter questioned how the Board can separate out documents on 404 permits from the Draft EIS and make their availability so limited.

One commenter stated COE 404 permit application is not complete. It is limited to a portion of Alternative C. COE should have its own EIS on a project of this magnitude. EPA recommended that COE hold the permit decision in abeyance on the CWA Section 404 permit until all necessary information has been provided. Another commenter stated that the maps submitted with the 404 application are outdated and do not show many of the physical features of the landscape such as highways, mines, and rail lines. One commenter stated that DM&E did not show to COE how they plan to conquer the Wall Hill, and questions where the money for construction and maintenance will come from.

One commenter questioned by what authority USFWS can recommend to COE that the DM&E Section 404 permit be denied should the Hay Canyon Segment be selected. The same commenter questioned why USFWS did not request denial on the WG Flat Route, and what the rights and obligations of USFWS on a State Game Production Area (Oral Segment) are. Another commentor stated that the no-build option is the only option here, and questions the acres of wetlands identified in WG Flat and Oral Segment.

Response

The Section 404 permitting process is a separate review process led by the COE. If the Board approves the proposed project, DM&E will complete the 404 permit process with COE. Additional information on the COE permitting process can be found in Chapter 3 of the Final EIS.

SEA has provided comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process. Questions related to USFWS recommendations will also be addressed by COE.

The Corps' review will consider direct and secondary impacts to all watercourses and wetland systems. Impacts to isolated waters will be considered in accordance with the Supreme Court's decision in SWANCC. The discrepancy in the wetland impact acres between the DEIS and the Corps public notice can be attributed to more refined field data being provided as part of the Corps permit application.

The Corps made the application available for review by having copies distributed to several locations, such as city offices and public libraries. This application was determined to be adequate to commence the individual public interest review process. The Corps believes being a cooperating agency and holding several joint public meetings/hearings with the STB was the appropriate procedure in evaluating this project. Preparing a separate EIS would have been an unnecessary expenditure of time and resources.

Issuance of Corps authorization does not obviate the need to comply with other Federal, state and local requirements and flood plain regulations. The Corps permit analysis will consider adverse effects to result from stream encroachments and require adequate mitigation to offset those impacts. The majority of streams to be crossed with the new 280 mile

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section of railroad involve ephemeral channels. Larger waterbody crossings will have more detailed analysis to evaluate potential impacts to channel stability. The Corps revisited the wetlands and waters delineation and identified those wetland and water features that were affected by the Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (January 9, 2001) (SWANCC). Results in changes to the Corps' jurisdiction will be reflected in their permit analysis. The 404 permit application was adequately distributed and advertised to allow appropriate public review and comment. The information provided in the 404 permit application met the requirements for a determination of a complete application as required under 33 CFR 325.1(d). The Corps is a cooperating agency for this EIS and will rely on its content in making its permit decisions. The Corps will render its final permit decisions once adequate information and analysis has been completed to ensure compliance with the requirements of Section 404 of the Clean Water Act and its implementing regulations. The maps provided with the 404 permit application are adequate to meet Corps permit review needs. The USFWS has the authority to comment on the Corps' permit process under the provisions of the Fish and Wildlife Coordination Act as well as the Endangered Species Act.

The Board is the agency responsible for granting authority for the construction of new rail line facilities. Accordingly, the Board is the lead agency responsible for supervising the preparation of the EIS. Several Federal agencies, including COE the Corps, are participating in the EIS process as cooperating agencies, as described in 40 CFR 1501.6. These agencies issue separate decisions under their authority regarding the proposed project.

Factor: F02A-Analysis - Data Accuracy

10

Restatement

000234

5

Commenters expressed concern that the proposed project would adversely affect sources of groundwater. One commenter said that two-thirds of Minnesota residents use groundwater as their primary drinking water source, and another commenter said that the Winona area' groundwater comes from a high permeability surficial alluvial aquifer in a shallow water table. A commenter also said that the proposed project could affect the water and wetlands in the Minnesota River Valley.

Another commenter alleged that the Draft EIS in Chapter 4, Section 4.9.5.3 incorrectly stated that the project would not affect groundwater, because the North Brookings City well field lies within 100 feet of the proposed Bypass, and an already shallow aquifer supplies water to the well field. One commenter questioned the statement in the Draft EIS in Volume III-B at page 4.4-31 that indicated that although the construction phase of the project would reduce the amount of water in groundwater wells, the well would be restored and not adversely affected during project operation.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. Appendix M of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for potential groundwater impacts. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on groundwater resources from the proposed project.

The Draft EIS stated that DM&E has indicated it would likely obtain some of its water during construction from local wells, subject to agreements with landowners, which could lead to local drawdowns of groundwater around the individual wells, reducing their yields. Wells used for construction water needs that experience reductions in yield would be expected to return to normal during project operation, because yields would be expected to return to normal once pumping demands returned to previous amounts.

Factor: F01H-Alternatives - Yards

Restatement 003016 5

One commenter stated that because 14.2 acres of wetlands are destroyed in Option B and 3.7 acres in Option A, Option B is not appropriate for the Middle East Staging and Marshaling Yard. In addition, the comment that 4.2 acres of wetlands are located within proposed rail yard site is inaccurate and misleading. Other wetlands would be adversely affected because of changes to the topography.

Response

Based on the evaluation in the Draft and Final EIS, SEA determined that Option B is the environmentally preferred alternative for the location of the Middle East Staging and Marshaling Yard. The mitigation of potential wetlands impacts is described in Chapter 12. Specific detailed wetlands mitigation would be included in any permit from the COE 404 permitting process.

Chapter 4 of this Final EIS provides additional analysis and data regarding potential environmental effects of rail yard construction and operations.

Factor: F02E-Analysis - Results

Restatement 004295 5

Commenters said the location of the rail yards could adversely affect water resources. A commenter said that the Final EIS should contain information on wastewater disposal from the locomotive washing that would take place at the yards. A commenter also said permanent stormwater basins should be located at the marshaling yards to protect groundwater resources.

One commenter said the Draft EIS listed the incorrect number of residences and population near the proposed staging yard on Shag Road, near New Olm, MN, and that since homeowners in that area rely solely on private wells for their water supply, any contamination could have serious consequences. The commenter also pointed out that a stream in the area leads to the Minnesota River, so groundwater contamination near the staging yard could contaminate the Minnesota River. Another commenter said that the site for the Minnesota yards is in the Rush Creek trout stream headwaters, so stormwater management is important to protect the stream from contaminated runoff.

Commenters said the Lewiston area is prone to sinkholes and ground disturbances that could lead to contamination of groundwater and stated that more analysis of groundwater contamination at the proposed marshaling yard needs to be done, since the analysis at Section 3.5.1.1.4 in the Draft EIS does not discuss contamination of well water and the importance of karst geology impacts. One commenter said that impacts to groundwater due to building rail yards over aquifers or wellhead or sourcewater protection areas should be examined more and DM&E needs to coordinate with local and state agencies when planning rail yards and use Best Management Practices. One commenter said that the Big Sioux aquifer in eastern South Dakota is a critical water supply that should be considered carefully.

Another commenter said that Option B for the Middle East Staging and Marshaling Yard would require mitigation for potentially affected waterways and one intermittent stream. The commenter also said that the proposed yard could affect recreational uses of the Minnesota River, since two-thirds of the rail site is within close proximity to the river. Another commenter said the stream listed as intermittent on page 3.5-22 of the Draft EIS is actually continuous and contains small fish that would be affected by the proposed yard. Another commenter expressed concern that the proposed West Yard for Alternative B is in a flood plain, and the Draft EIS indicated that water frequently covers the area.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and operation of the proposed yards and the unlikelihood of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater from rail yards. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. The technical appendix of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater.

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials could introduce contaminants into water sources, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. During rail yard operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition, impacts to surface waters from derailments are unlikely. The Draft EIS indicated that changes in the ground surface created by the presence of the proposed rail yards could alter surface drainage to adjacent waterways and increase sedimentation. As part of the operation of any rail yard facility, DM&E would have to comply with state and local regulations, which would protect water resources from environmental impacts.

Chapter 4 of the Final EIS addresses the potential environmental impacts of the proposed rail yards. Chapter 12 sets forth SEA's recommended mitigation measures. The Final EIS also contains corrected information on the number of residences near the proposed staging yard at Shag Road and Chapter 6 of the Final EIS contains analysis of the impacts of the proposed project on the Big Sioux aquifer. The technical appendix includes information on groundwater resources and karst geology.

Factor: F02D-Analysis - Mitigation

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Restatement

008066

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One commenter suggested that the mitigation plan be submitted to the resources agencies for review and comment prior to any Section 404 authorizations. The commenter recommended that the development of the mitigation plan be done so that site location, preparation and hydrologic functions and values of the affected wetlands are preserved. The commenter recommended that the wetland mitigation plan be adjusted to better fit the type and value of the wetland being impacted, with 3:1 ratios in Wyoming, South Dakota, high functional value wetlands, and those classified as PFO using the Cowardin system. Based on the uncertainty that the applicant has selected the least damaging alternatives in all cases the commenter had no assurances that impacts will be avoided, minimized and mitigated to the maximum extent possible. It is important that the applicant provide an accurate estimate of total wetland acreage affected to determine the total impacts to wetland functions and values, and thus the total amount and type of mitigation required. The Draft EIS indicated 187.8 acres of wetland affected, but the COE public notice indicated 240 acres. Furthermore, additional medium value wetland impact acreage should be added to DM&E's totals that were provided in the Section 404 permit application. Ten acres of Lacustrine or Riverine wetland were not rated, and they should be given a value of medium. The commenter recommended a minimum of 1.5 acres of mitigation for each acre of wetland affected in Minnesota, where wetlands are more common. (except high value and PFO wetlands)

Response

SEA's recommended mitigation for wetlands impacts, including mitigation plans developed with state agencies and COE, is described in Chapter 12 of the Final EIS.

The Board is the lead agency responsible for supervising the preparation of the EIS. SEA used National Wetland Inventory (NWI) maps and the most recent data available in wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State

and local wetland requirements will be coordinated with COE during the 404 permitting process.

Preliminary information on wetland mitigation has been provided by the Applicant. More detailed mitigation plans will need to be developed and approved by the Corps prior to construction. The Corps will continue to coordinate with other resource agencies to ensure that accurate wetland acreages and values are considered when reviewing wetland mitigation plans.

Resource agencies will be allowed an opportunity to review and comment on the mitigation proposals associated with the Section 404 permit in the Omaha District. Mitigation specifics such as site location, existing conditions, comparison to impact areas, goals, success criteria and other information will be contained in the wetland and waters mitigation package. Any Corps permit from the Omaha District will ensure that project impacts are avoided and minimized to the extent practicable. The 404 permit application has specified the maximum amount of potential wetland acreage impact. Railroad design efforts will likely result in less impacts than those currently displayed in the 404 permit application. The Corps is working with the applicant to formulate an acceptable wetland and waters mitigation package.

Additional discussion of wetland impacts and functions and types of mitigation required can be found in Chapters 3 and 4 of the Final EIS.

Factor: F02E-Analysis - Results

4

Restatement 001097 4

One commenter stated that the wetland portion of the Brookings section seems impractical. Alternatives B-1 and B-2 are stated as affecting 5.8 acres of wetlands encompassing 12 intermittent streams and a river. Alternatives B-3 and B-4 are stated as affecting 20 intermittent streams and a river. Almost twice the number of crossings affect a lesser acreage of 5.1 acres. Another commenter stated that any new bypass would adversely affect wetland areas in the Brookings area and result in increased flooding.

Response

Discussion of the Brookings Alternatives and acreage affected and a discussion of potential flooding impacts can be found in Section 4.9.5 of the Draft EIS. Based on public comment, SEA has included additional discussion and analysis in Chapter 6 of the Final EIS. Based on the evaluation in the Draft and Final EIS, SEA determined that the existing route through Brookings is the environmentally preferred alternative, if the Board approves the proposed project.

Factor: F02C-Analysis - Methods

31

Restatement 001098 3

Commenters expressed concern that the proposed project could lead to contamination of groundwater during construction and operation of the rail line. Commenters said the karst geology of the area could easily cause above-ground contaminants to seep into groundwater supplies. For example, commenters said that the City of Skyline contains perched aquifers, or aquifers that are part of the local surficial aquifer system that connect with the deeper Cambrian-Ordovician aquifer system. The city receives water from wells supplied by these interrelated aquifers, so contaminating one part of the system would lead to contamination of the entire water supply. The commenters said that building the Mankato southern route, the M-2 Alternative, would cut into the Jordan Sandstone of the area, exposing the groundwater to any possible spill, and more analysis of this potential problem should be done.

Commenters pointed to similar problems in the Rochester area. The hydrology of both the in-city and proposed Bypass routes could lead to groundwater contamination. Commenters said there are three types of glacial geologic terrain in the Bypass areas that could be easily contaminated from surface spills: glacial till areas, sinkholes and caves, and alluvial and fluvial terrain. One commenter said studies have already been conducted finding that Rochester area hydrology leads to unstable roadbeds and foundation

instability, and such hydrology could lead to greater contamination of the water supply. Another commenter said that there have been nine rail accidents in Olmstead County in the Rochester/Zumbro Aquifer-shed, which is the primary source of drinking water for the City of Rochester, and three have been within the city's Wellhead Protection Area, which is an area designated for special protection under the Federal Safe Drinking Water Act. Another commenter questioned the effects of the rail bed grade and discharges on groundwater in Olmstead County.

Another commenter said the Brookings Bypass could lead to contamination of the entire city's water supply, because the proposed route would pass directly over the city's wells. One commenter said that the Draft EIS' statement in Volume III-B, page 4.9-16 that the proposed project would have no significant effects on groundwater assumes that there will be no transportation of hazardous materials. The commenter said that the Board needs to condition project approval on the transportation of hazardous materials, and that if such a condition cannot be imposed, the effects of possible hazardous material contamination of groundwater needs to be evaluated.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikelihood of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. Appendix M of the Final EIS describes SEA's additional analysis regarding groundwater resources and karst geology, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater.

The Draft EIS discussed Minnesota's aquifer system in Chapter 3, Section 3.1.5.4. Chapter 4, Sections 4.1.5.4 and 4.2.5.4 addressed the aquifer systems of South Dakota and Wyoming, respectively. As described in Chapters 5 (Pierre), 6 (Brookings), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts. As a result, groundwater impacts would not occur along the bypass routes. Chapter 7 describes SEA's evaluation of the Southern Route Alternative in the Mankato area, including potential groundwater impacts.

Factor: F02C-Analysis - Methods

18

Restatement

007624

28

Commenters said DM&E needed to include more information in its 404 COE permit application. One commenter said DM&E needed to identify all the water supply sources in the project area and evaluate them for impacts. A commenter said in the 404 permit application the total stream impacts for Minnesota were not the same in Table 2 of Volume I and Volume V, and in Volume I the cumulative impacts of all watersheds that empty in the Mississippi River should be added to the list of stream crossing impacts. The commenter said that DM&E should have cross-referenced bridge or stream crossings and proposed wetland mitigation sites in Volume II to the map in Volume V, and the application did not contain a consistent format for information presentation. The commenter also said that DM&E needed to analyze its proposal for consistency with Minnesota's wellhead protection plans.

However, one commenter said that the information in the permit application indicates that DM&E will undertake more mitigation than stated in the Draft EIS. For example, Volume 1, attachments B&C of the permit application indicate that DM&E will adopt Best Management Plans to prevent storm water pollution and erosion. The commenter also indicated that DM&E will develop methods to trap sedimentation from reaching water and to revegetate disturbed areas after construction to avoid water quality degradation, and would perform work during low or no flow periods.

Response

DM&E's 404 permit application describes DM&E's proposed action and mitigation for potential impacts to wetlands and waterways, in compliance with the Clean Water Act. COE is the responsible agency for the 404 permitting process, which would be completed after the Board makes its decision on the proposed project. During preparation of the Draft and

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Final EIS, SEA coordinated closely with COE to ensure that the 404 permit application and the EIS provided consistent information. Where appropriate, this Final EIS updates information in the Draft EIS. COE will include general and special conditions in any 404 permit and will address revegetation needs, downstream water uses, soil erosion, and sediment control issues as they relate to impacts to waters of the U.S., as well as other activities that have the opportunity and ability to adversely affect aquatic resources.

The Omaha District and field office staff verified the wetland and waters delineation completed by DM&E. Site visits were accomplished:

8/19/99 Eastern South Dakota
10/25-26/99 Wyoming
7/25-28/00 Western South Dakota
8/1-2/01 Eastern South Dakota - to determine impact of U.S. Supreme Court's SWANCC v. COE decision on jurisdiction
8/23-24/01 Western South Dakota to compare NWI data to delineation

While some revisions were made to the delineation during these visits, acreage changes were not significant.

Factor: F02D-Analysis - Mitigation

30

Restatement 000244 3

Commenters asked for more information on how the proposed project would affect waters listed as impaired or protected on Federal and state water quality lists. Commenters specifically questioned the impacts on the Cheyenne River and the Bad River and requested that appropriate mitigation be devised in the EIS and the 404 permit application. One commenter asked how existing Federally-funded efforts under Section 319 of the Clean Water Act for the Bad River would be affected by the project and wanted to find out what other impaired waters would be affected by the project. A commenter said that although the Draft EIS indicates that Alternative C supposedly stays away from the Cheyenne River, page 4.4-28 lists the mileage for each alternative along the Cheyenne River as follows: 21.9 miles for Alternative B, 20.8 miles for Alternative C and 13.5 miles for Alternative D. Another commenter said the part of the Cheyenne River between Box Elder Creek and the highway bridge near Creston contains fragile grasslands and river resources that need to be protected. Another commenter said impacts to the watersheds and tributaries of the Cheyenne River could affect the Pine Ridge Indian Reservation' water sources and further harm the Sturgeon Chubb, which the U.S. Fish and Wildlife Service has designated as threatened.

Commenters also pointed out that the impaired Garvin Brook trout stream in Winona County would be crossed 8 times by the proposed rail line, so the EIS should detail the impacts for each crossing and devise site-specific mitigation. One commenter said underground karst conduits carry pollutants to Garvin Brook and the project' impacts on such pollution need to be explored in more depth. Another commenter said that DM&E has already polluted Cascade Creek through spills, and mitigation must be devised to protect water resources from the effects of such spills from proposed DM&E activities.

One commenter said that the project would affect ten streams that are Minnesota Protected Waters, and that the proposed Rochester Bypass would cross the headwaters of three of those watersheds the Zumbro River, the Root River, and the Whitewater River. The commenter said the Final EIS should analyze the impacts to the watersheds in more depth. Also, active watershed restoration projects concern the Zumbro River and the Whitewater River, so the commenter requested that the agencies carrying out the projects be contacted to evaluate the impacts of the proposed Bypass on the projects.

Other commenters requested information on how pristine waters would be preserved. One commenter said Alternative O-3 would affect the Izaak Walton Creek, which contains cleaner waters than the streams that would be affected by the other alternatives. Another commenter expressed concern about impacts to the Mississippi River.

Response

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials at stream crossings could introduce contaminants into the water, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. Construction impacts to surface waters would primarily occur to those the perennial streams crossed. It is likely many of the intermittent stream crossings could be installed and reclamation measures implemented without water ever being present in the stream channel. In these instances, should a spill of hazardous substances occur, it could be contained and cleaned up without affecting surface water resources.

During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition and the derailment needing to occur at a perennial stream crossing, impacts to surface waters from derailments are unlikely. The infrequent (necessary only once every several years) disturbance to bottom sediments and stream banks associated with bridge or culvert maintenance activities would be the most likely affected during rail line operation. Such disturbances would be minor because they would involve little in-stream work or site disturbance. Additionally, during railroad operation, herbicide application within the rail line right-of-way to control vegetation could reduce water quality if herbicides are improperly applied or allowed to enter surface water.

The Draft EIS addressed impacts to surface waters in Chapter 3 and Chapter 4.

Chapter 4 of the Final EIS describes SEA's additional analysis regarding impaired waters. Chapter 12 of this Final EIS describes SEA's final recommended mitigation for surface water resources. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts to surface water resources from the proposed project.

SEA is not recommending the Rochester Bypass as a viable alternative. Therefore, potential environmental impacts of the Bypass will not occur.

In Chapter 8 of the Final EIS, SEA presents additional discussion of potential environmental effects on Alternatives O-3, O-4, and O-5. SEA has identified O-4 as the environmentally preferable alternative.

Factor: F02E-Analysis - Results

30

Restatement

000244

3

Commenters asked for more information on how the proposed project would affect waters listed as impaired or protected on Federal and state water quality lists. Commenters specifically questioned the impacts on the Cheyenne River and the Bad River and requested that appropriate mitigation be devised in the EIS and the 404 permit application. One commenter asked how existing Federally-funded efforts under Section 319 of the Clean Water Act for the Bad River would be affected by the project and wanted to find out what other impaired waters would be affected by the project. A commenter said that although the Draft EIS indicates that Alternative C supposedly stays away from the Cheyenne River, page 4.4-28 lists the mileage for each alternative along the Cheyenne River as follows: 21.9 miles for Alternative B, 20.8 miles for Alternative C and 13.5 miles for Alternative D. Another commenter said the part of the Cheyenne River between Box Elder Creek and the highway bridge near Creston contains fragile grasslands and river resources that need to be protected. Another commenter said impacts to the watersheds and tributaries of the Cheyenne River could affect the Pine Ridge Indian Reservation' water sources and further harm the Sturgeon Chubb, which the U.S. Fish and Wildlife Service has designated as threatened.

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protect water resources from the effects of such spills from proposed DM&E activities.

One commenter said that the project would affect ten streams that are Minnesota Protected Waters, and that the proposed Rochester Bypass would cross the headwaters of three of those watersheds; the Zumbro River, the Root River, and the Whitewater River. The commenter said the Final EIS should analyze the impacts to the watersheds in more depth. Also, active watershed restoration projects concern the Zumbro River and the Whitewater River, so the commenter requested that the agencies carrying out the projects be contacted to evaluate the impacts of the proposed Bypass on the projects.

Other commenters requested information on how pristine waters would be preserved. One commenter said Alternative O-3 would affect the Izaak Walton Creek, which contains cleaner waters than the streams that would be affected by the other alternatives. Another commenter expressed concern about impacts to the Mississippi River.

Response

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials at stream crossings could introduce contaminants into the water, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. Construction impacts to surface waters would primarily occur to those the perennial streams crossed. It is likely many of the intermittent stream crossings could be installed and reclamation measures implemented without water ever being present in the stream channel. In these instances, should a spill of hazardous substances occur, it could be contained and cleaned up without affecting surface water resources.

During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition and the derailment needing to occur at a perennial stream crossing, impacts to surface waters from derailments are unlikely. The infrequent (necessary only once every several years) disturbance to bottom sediments and stream banks associated with bridge or culvert maintenance activities would be the most likely affected during rail line operation. Such disturbances would be minor because they would involve little in-stream work or site disturbance. Additionally, during railroad operation, herbicide application within the rail line right-of-way to control vegetation could reduce water quality if herbicides are improperly applied or allowed to enter surface water.

The Draft EIS addressed impacts to surface waters in Chapter 3 and Chapter 4.

Chapter 4 of the Final EIS describes SEA's additional analysis regarding impaired waters. Chapter 12 of this Final EIS describes SEA's final recommended mitigation for surface water resources. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts to surface water resources from the proposed project.

SEA is not recommending the Rochester Bypass as a viable alternative. Therefore, potential environmental impacts of the Bypass will not occur.

In Chapter 8 of the Final EIS, SEA presents additional discussion of potential environmental effects on Alternatives O-3, O-4, and O-5. SEA has identified O-4 as the environmentally preferable alternative.

Factor: F02D-Analysis - Mitigation

4

Restatement 007546 270

Some commenters said the proposed project would affect recreational water uses. One commenter said the rail line would cross streams that drain into the Chester Woods County Park in Olmstead County seven times and contamination of the reservoir would affect people's swimming activities. One commenter suggested mitigation for Mankato alternative M-3 for the Tourtellotte Park pool in the form of sound barriers and plants.

Another commenter said the Draft EIS should have discussed the impacts to the Whitewater River, which contains trout streams, while a commenter also said that Chapter 3 of the Draft EIS at Section 3.1.5 did not discuss the fact that coal burning contaminates Minnesota lakes with mercury and makes the fish inedible.

Response

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials at stream crossings could introduce contaminants into the water, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition, impacts to surface waters from derailments are unlikely. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on surface water resources from the proposed project.

The regulation of coal burning is under EPA's jurisdiction. Furthermore, denial of the PRB Expansion Project would not eliminate coal burning from the region.

Factor: F03E-Process - Cooperating agencies policies, processes

10

Restatement 007639 22

One commenter stated that the Bureau of Reclamation (Reclamation) expressed concern that the proposed project might cross the Angostura Irrigation District (District), and the District had passed a resolution opposing such a crossing. The commenter said the District provides water for over 12,000 acres and that Alternative C would cost landowners about \$159,000 per year in crop value and increase costs of maintaining the land in the area. The commenter said that the Final EIS needs to take into account the detrimental economic effects of the project on the District. Another commenter indicated that the resolution of the District opposing construction on irrigated lands needs to be discussed.

One commenter asked why the Draft EIS indicated that the Reclamation has the authority to deny DM&E permits to cross the irrigation ditch easements in the Angostura Unit in western South Dakota in Volume VIII-B, Appendix L, page 1-1. The commenter said that Reclamation had stated that it cannot deny issuing permits to DM&E.

One commenter said that Volume IV, page 5-7 of the Draft EIS did not discuss the rural water system in Fall River County, the contract EIS on the Angostura Irrigation Project and the consequences of alternatives as related to the Angostura Irrigation Project as reasonable foreseeable projects in South Dakota.

Response

In Chapter 4 of the Draft EIS and Chapter 3 of the Final EIS, SEA addresses socioeconomic impacts of the potential Angostura Irrigation District crossing.

Although Reclamation has the authority to decide whether to grant or deny easements or permits to cross facilities associated with the District, Reclamation cannot arbitrarily deny such easements or permits. Reclamation generally would deny an application to cross the District if the impacts of the proposed project were so severe or unmitigatable that they would prevent the delivery of water to irrigators. Reclamation has met with DM&E to discuss mitigation and it appears that DM&E could mitigate the adverse impacts of their proposed project. DM&E has also expressed a willingness to work with both Reclamation and the District to achieve mitigation that is acceptable. If the Board approves the PRB Expansion Project, Reclamation would consider the proposed project and the mitigation plan in making its decision on granting DM&E easements and permits.

Section 4.1.4.6.4 of the Draft EIS described the Angostura Irrigation Project and Sections 4.4.6.5.3 and 4.6.2.5.3 discussed the impacts of the various alternatives of the proposed project to the Angostura Irrigation Project and the District.

The Fall River Water Users System is intended to supply potable water for domestic and agricultural uses in Fall River County. As stated in the Draft EIS, the PRB Expansion Project has the potential to damage utilities, such as the Fall River Water Users System, and DM&E would need to coordinate with the owners of all utilities crossed by or adjacent to the existing right-of-way to ensure they are properly protected during construction and reconstruction, and determine if they would require relocation or reconstruction to prevent future damage from rail operations. SEA includes additional discussion and analysis of the rural water system in Fall River County in Chapter 3 of the Final EIS. Chapter 12 of this Final EIS describes SEA's recommended mitigation, including mitigation to protect utilities.

Factor: F02A-Analysis - Data Accuracy

28

Restatement 007540 19

One commenter stated that it is incorrectly stated on page 3.1-28 that a site must have hydric soils, a dominance of hydrophytic vegetation, and wetland hydrology to be classified as a wetland. It appears that Draft EIS should really be using the term "incidental" wetlands - those formed in uplands by an activity or project, rather than "jurisdictional." 7540-19, 7624-10

One commenter noted that the various rail yard options and the Rochester bypass options depicted in section 3.3.2, are not shown in the COE 404 application materials that were submitted to MPCA on October 13, 2000.

One commenter questioned the number of acres of wetlands identified in WG Flat and Oral Segment on page ES-45, and requests that the land and acres along right-of-way which may be taken be identified. 404-77 Another commenter stated that the figures are incorrect in Table 3- 64 on page 3-97. The table lists 6.1 miles and Table 3-66 lists 3.3 miles. A commenter stated that wetlands within the WG Flat are much more than that.

Page 4.1-30, paragraph 2, sentence 2 indicates that glacially carved wetlands in South Dakota hold water throughout the year, which is incorrect. Additional language is needed to indicate USFWS's involvement in SD. USFWS must review permit applications. They may concur or recommend denial depending upon the effects. On page 4.3-16, paragraph 5, sentence 3, the county wetland acreage table is 4.1-7 rather than 4.1-12.

Response

SEA reviewed statements made in the Draft EIS pertaining to incidental and jurisdictional wetlands and determined those statements to be appropriate. Several commenters appear to be comparing acreage estimates in the Draft EIS with the detailed wetlands delineation estimates prepared by the Corps. SEA recognizes that there were some acreage discrepancies in the Draft EIS in South Dakota, Minnesota, WG Flat, and Oral Segment. Acreage estimates are discussed further in Chapter 3 of the Final EIS.

The Omaha District of the Corps of Engineers does not draw a distinction between jurisdictional and incidental wetlands. Wetlands not considered jurisdictional are described, on a case by case basis, in the preamble of the Corps' Regulatory Program Regulations at 33 CFR Part 328 (Vol. 51, No. 219, dated 11/13/1986).

The Draft EIS stated that glacially carved wetlands in SD "often" hold water throughout the year. "Often" implies that there are times when they may not hold water, therefore the statement is appropriate.

SEA has provided the comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance.

The COE has an obligation to solicit input from other applicable Federal agencies (including USFWS) as part of permitting projects under the Clean Water Act. As part of

this input, USFWS can make comments or recommendations based on project impacts to USFWS resources. Agency responsibilities in the EIS process are discussed in Chapter 1 of the Draft EIS.

Factor: F02C-Analysis - Methods

18

Restatement 007624 13

A commenter provided several specific comments regarding the wetlands analysis prepared by DM&E. The commenter stated that DM&E excluded ditches from the photo interpretation. DM&E did not state what year the aerial photographs were taken that they did the wetland interpretation from. DM&E did not provide a caveat about the level of accuracy for the national Wetland Inventory maps they used as reference. DM&E only ground-truthed a ten mile stretch for wetland presence, only 3.7% of the total rail length in Minnesota. DM&E did not define "not existing" wetlands that were dropped from the mapping that had been photo interpreted. DM&E must delineate all of the wetlands that will be affected, not just 28 sites. Also, no direct measurements were made of the construction impact on wetlands adjacent to the rail line. DM&E did not state where the latitude/longitude coordinates were established. In the Regulates column in Block 25 of US Army ENG Form 4345 & Combined Project Application section in Volume I, MPCA regulates the placement of fill in all waters of the state, including MN DNR Protected Waters. The row labeled flood attenuation/water quality in Table 2 in the Appendix to Volume II is misleading, indicating that wetlands smaller than one acre have less value for these functions. The row titled red flag implies that the lack of an adjacent special area also diminishes the value of a wetland. MPCA cannot act on the request for Clean Water Act Section 401 water quality certification because the 404 Permit Application does not satisfy the criteria to process it. After the EIS is completed and the specific wetland mitigation plans and requested information are submitted, MPCA will reinitiate their review and the 401 certification process.

Response

The Board is the lead agency responsible for supervising the preparation of the EIS. SEA used National Wetland Inventory (NWI) maps and the most recent data available in wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. The Corps believes the wetland delineation information submitted with the 404 permit application accurately reflects the extent of wetlands in the project area. The Corps will continue to coordinate with the MPCA regarding Section 401 certification. DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

SEA acknowledges that there may be some impact to wetlands outside the immediate project area. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

Tables in the Draft EIS are not intended to diminish the value of any wetlands, but to provide information to the reader.

Factor: F02D-Analysis - Mitigation

28

Restatement 001339 1

One commenter pointed out that DM&E must mitigate wetland impacts. Under Minnesota law, two acres of new wetland must be constructed for every one acre destroyed. Higher quality wetlands must be mitigated at a greater ratio. Use of appropriate BMPs is essential to prevent sedimentation and degradation of water quality.

Another commenter stated that the Draft EIS indicates potentially significant impacts on wetland resources, but with mitigation, more and better wetlands could result. DM&E has agreed to avoid impacts through the use of BMPs (written in Volume I of the 404 Permit Application) and alignment selection followed by compensation for unavoidable impacts. The Final EIS should fully discuss and consider these mitigation measures in assessing the level of project impacts on wetlands.

The same commenter stated that the construction of the Central Yard will result in the conversion of 55 acres of conservation easements to railroad uses. DM&E must get a special use permit from FWS. Any permanent loss of habitat and other conservation values impacted by the Central Yard would be mitigated and offset through mitigation, permit stipulation, the exchange of wetlands of equal or greater resource values, or a combination of such measures.

Response

SEA acknowledges that some wetlands will be impacted during railroad construction, but with mitigation, more wetlands may result. SEA's recommended mitigation measures, including mitigation plans developed with state agencies and USFWS, are included in Chapter 12 of the Final EIS. These address potential concerns about impacts to wetlands. The COE will determine the actual quantities of wetlands which will require mitigation, wetland construction, and replacement ratios used.

Factor: F02E-Analysis - Results

28

Restatement 007438 1

Commenters expressed concern over the impacts of the proposed project on the Mankato Flood Control Project. Commenters said that the tracks for the reconstruction of the existing line, M-3 Alternative, would be located a few feet from the flood wall in downtown Mankato and above the levee in LeHillier. The commenters said the impacts of increased train traffic could have serious consequences on the flood wall, and since the city owns the Flood Control Project, a commenter questions whether the city would have to bear the cost of damages. Commenters requested that extensive testing and analysis of the impacts on the flood wall be done and a new Draft EIS be issued with the results.

The City of Mankato stated that the city must approve any testing criteria for the Flood Control Project and that the city will not allow DM&E to modify the Flood Control Project unless the city approves of the modification plan. The city requested mitigation provisions that require the COE to ensure the integrity of the flood control system; require the COE to monitor the system for problems; ensure that the city will not pay for damages; ensure that the COE indemnifies the city for failure of flood control and guarantees federal disaster relief; and require DM&E to bear all construction and maintenance costs.

Another commenter said that the effects of the Mankato southern route, Alternative M-2, on a COE of Engineers flood control structure near Mankato needed to be studied in depth to determine how the flood control channel would be maintained at the present location and elevation. The commenter said that perhaps a tunnel could be constructed under the rail bed to permit drainage into the river, but this could then make the rail bed unstable over time and would lead to complications in the event of a hazardous materials accident. Another commenter said the M-2 route would cross part of the Indian Creek Flood Control Project, where a stream diversion (Stage 3B-1) redirects water from Indian Creek to the Blue Earth River, and would cross an earthen channel and drop structure at the Blue Earth River. The commenter requested that the COE review the impacts of the M-2 route on flood control plans and advise the city as to adequate mitigation, which may include bridges or rerouting.

Response

In response to public comments, SEA conducted additional analysis of the impacts of the proposed project on the Mankato Flood Control Project and determined that Alternative M-3 would not adversely affect the Flood Control Project. Chapter 7 of this Final EIS and the appendix M describe SEA's additional analysis regarding the Flood Control Project.

SEA conducted additional analysis of the impacts of Alternative M-2 on the Indian Creek Flood Control Project and determined that no impacts would occur. Chapter 7 of this Final EIS describes SEA's additional analysis regarding the Indian Creek Flood Control Project.

Chapter 12 of the Final EIS lists SEA's recommended mitigation measures, including mitigation to ensure the integrity of the flood control project in Mankato.

Factor:**Restatement**

004295

5

Commenters said the location of the rail yards could adversely affect water resources. A commenter said that the Final EIS should contain information on wastewater disposal from the locomotive washing that would take place at the yards. A commenter also said permanent stormwater basins should be located at the marshaling yards to protect groundwater resources.

One commenter said the Draft EIS listed the incorrect number of residences and population near the proposed staging yard on Shag Road, near New Olm, MN, and that since homeowners in that area rely solely on private wells for their water supply, any contamination could have serious consequences. The commenter also pointed out that a stream in the area leads to the Minnesota River, so groundwater contamination near the staging yard could contaminate the Minnesota River. Another commenter said that the site for the Minnesota yards is in the Rush Creek trout stream headwaters, so stormwater management is important to protect the stream from contaminated runoff.

Commenters said the Lewiston area is prone to sinkholes and ground disturbances that could lead to contamination of groundwater and stated that more analysis of groundwater contamination at the proposed marshaling yard needs to be done, since the analysis at Section 3.5.1.1.4 in the Draft EIS does not discuss contamination of well water and the importance of karst geology impacts. One commenter said that impacts to groundwater due to building rail yards over aquifers or wellhead or sourcewater protection areas should be examined more and DM&E needs to coordinate with local and state agencies when planning rail yards and use Best Management Practices. One commenter said that the Big Sioux aquifer in eastern South Dakota is a critical water supply that should be considered carefully.

Another commenter said that Option B for the Middle East Staging and Marshaling Yard would require mitigation for potentially affected waterways and one intermittent stream. The commenter also said that the proposed yard could affect recreational uses of the Minnesota River, since two-thirds of the rail site is within close proximity to the river. Another commenter said the stream listed as intermittent on page 3.5-22 of the Draft EIS is actually continuous and contains small fish that would be affected by the proposed yard. Another commenter expressed concern that the proposed West Yard for Alternative B is in a flood plain, and the Draft EIS indicated that water frequently covers the area.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and operation of the proposed yards and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater from rail yards. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. The technical appendix of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater.

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials could introduce contaminants into water sources, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. During rail yard operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition, impacts to surface waters from derailments are unlikely. The Draft EIS indicated that changes in the ground surface created by the presence of the proposed rail yards could alter surface drainage to adjacent waterways and increase sedimentation. As part of the operation of any rail yard facility, DM&E would have to comply with state and local regulations, which would protect water resources from environmental impacts.

Chapter 4 of the Final EIS addresses the potential environmental impacts of the proposed rail yards. Chapter 12 sets forth SEA's recommended mitigation measures. The Final EIS also contains corrected information on the number of residences near the proposed staging yard at Shag Road and Chapter 6 of the Final EIS contains analysis of the

impacts of the proposed project on the Big Sioux aquifer. The technical appendix includes information on groundwater resources and karst geology.

Factor:

0

Restatement

007625

64

One commenter stated that the Draft EIS failed to provide details of wetland and water crossings for the Mankato bypass, although the Corps 404 permit application does. However, information on water crossings was not included in the COE permit application for either Alternatives M-2 or M-3. Therefore, it is impossible to provide detailed comments on the natural resource impacts. 7625-64 The Draft EIS failed to note that the M-2 route would cross a portion of the City of Mankato's Indian Creek Project in Section 26, T108N, R27W, and that it crosses a tributary to the Le Sueur River in Section 27, T108N, R26W, which is a Minnesota Department Natural Resources public water. Another commenter stated that the 404 application is deficient because it does not depict a large wetland impact associated with the proposed M-3 route that will occur in Section 5, Township 108 North, Range 26 West, and Section 32, Township 109 North, Range 26 West. According to the DM&E Track Layout Plans, a new main line will be constructed through 4700 feet of wetland in these sections. The impact is estimated at 4.25 acres, which may exceed the mandatory thresholds for an Environmental Assessment Worksheet because the impact area may be located within Minnesota River Project Riverbend. Another commenter stated that COE and DNR should withhold permits for the M-3 route until the city formally receives the DM&E application for wetland impacts, and until all matters regarding the Mankato Flood Control Project are resolved.

Response

Discussion of the Mankato Alternatives can be found in Section 3.3 of the Draft EIS. Further discussion, analysis, and comparison of the environmental impacts of the alternatives can be found in Chapter 7 of the Final EIS. Based on this evaluation, SEA determined that the Southern Route Alternative (M-2) is the preferred alternative if the Board approves the proposed project. SEA determined that the existing route through Mankato (M-3) is not feasible because UP has not come forward to indicate a willingness to provide DM&E access to its right-of-way. If UP and DM&E reach an agreement for construction of the M-3 Alternative, SEA believes it would be preferred to the Southern Route Alternative. However, the Board does not have the authority to direct UP to participate in the M-3 Alternative. In its final recommendations, SEA has included recommended mitigation for construction of the M-2 Alternative, as well as for the M-3 Alternative, if UP and DM&E reach an agreement. An additional analysis of wetlands and flood-control projects is found in Chapter 7 of this Final EIS.

Factor:

0

Restatement

006311

2

Commenters said the hydrology of the project area might be unsuitable for rail expansion. For example, in the City of Skyline, the proposed rail line would pass over an unstable hill that contains perched aquifers, creating a situation for a potential slide.

Response

Section 3.1.3.3 of the Draft EIS discussed geological hazards of the proposed project in Minnesota, and Section 3.3.2.3.1 specifically addressed geological hazards for the Rochester area alternatives. Some areas adjacent to Rochester are dominated by karst topography with a high probability for sink holes. Karst topography is characterized by caves and sinkholes created from the movement of undergroundwater dissolving limestone bedrock. The density of sinkholes in these areas may range from 20 to several hundred sinkholes per square mile. Areas associated with karst topography are not well suited for railroad construction activities. Chapter 9 of the Final EIS describes the additional analysis for the Rochester area alternatives.

Section 4.1.3.3 of the Draft EIS discussed the geological hazards of the proposed project in South Dakota, and Section 4.2.3.3 addressed the geological hazards of the proposed project in Wyoming. In South Dakota and Wyoming, portions of all the alternatives cross the Pierre Shale and Fort Union formations. These formations are highly susceptible to landslides (Radbruch-Hall et al. 1976). The clay-mineral content of these rocks is moderate to high, making them susceptible to slumps and earth flows.

Chapter 12 of the Final EIS details SEA's recommended mitigation measures, including mitigation to prevent potential geological hazards.

Factor:

0

Restatement

007546

270

Some commenters said the proposed project would affect recreational water uses. One commenter said the rail line would cross streams that drain into the Chester Woods County Park in Olmstead County seven times and contamination of the reservoir would affect people' swimming activities. One commenter suggested mitigation for Mankato alternative M-3 for the Tourtellotte Park pool in the form of sound barriers and plants.

Another commenter said the Draft EIS should have discussed the impacts to the Whitewater River, which contains trout streams, while a commenter also said that Chapter 3 of the Draft EIS at Section 3.1.5 did not discuss the fact that coal burning contaminates Minnesota lakes with mercury and makes the fish inedible.

Response

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials at stream crossings could introduce contaminants into the water, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition, impacts to surface waters from derailments are unlikely. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on surface water resources from the proposed project.

The regulation of coal burning is under EPA's jurisdiction. Furthermore, denial of the PRB Expansion Project would not eliminate coal burning from the region.

Factor:

0

Restatement

008066

38

One commenter suggested that the mitigation plan be submitted to the resources agencies for review and comment prior to any Section 404 authorizations. The commenter recommended that the development of the mitigation plan be done so that site location, preparation and hydrologic functions and values of the affected wetlands are preserved. The commenter recommended that the wetland mitigation plan be adjusted to better fit the type and value of the wetland being impacted, with 3:1 ratios in Wyoming, South Dakota, high functional value wetlands, and those classified as PFO using the Cowardin system. Based on the uncertainty that the applicant has selected the least damaging alternatives in all cases the commenter had no assurances that impacts will be avoided, minimized and mitigated to the maximum extent possible. It is important that the applicant provide an accurate estimate of total wetland acreage affected to determine the total impacts to wetland functions and values, and thus the total amount and type of mitigation required. The Draft EIS indicated 187.8 acres of wetland affected, but the COE public notice indicated 240 acres. Furthermore, additional medium value wetland impact acreage should be added to DM&E's totals that were provided in the Section 404 permit application. Ten acres of Lacustrine or Riverine wetland were not rated, and they should be given a value of medium. The commenter recommended a minimum of 1.5 acres of mitigation for each acre of wetland affected in Minnesota, where wetlands are more common. (except high value and PFO wetlands)

Response

SEA's recommended mitigation for wetlands impacts, including mitigation plans developed with state agencies and COE, is described in Chapter 12 of the Final EIS.

The Board is the lead agency responsible for supervising the preparation of the EIS. SEA used National Wetland Inventory (NWI) maps and the most recent data available in

wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

Preliminary information on wetland mitigation has been provided by the Applicant. More detailed mitigation plans will need to be developed and approved by the Corps prior to construction. The Corps will continue to coordinate with other resource agencies to ensure that accurate wetland acreages and values are considered when reviewing wetland mitigation plans.

Resource agencies will be allowed an opportunity to review and comment on the mitigation proposals associated with the Section 404 permit in the Omaha District. Mitigation specifics such as site location, existing conditions, comparison to impact areas, goals, success criteria and other information will be contained in the wetland and waters mitigation package. Any Corps permit from the Omaha District will ensure that project impacts are avoided and minimized to the extent practicable. The 404 permit application has specified the maximum amount of potential wetland acreage impact. Railroad design efforts will likely result in less impacts than those currently displayed in the 404 permit application. The Corps is working with the applicant to formulate an acceptable wetland and waters mitigation package.

Additional discussion of wetland impacts and functions and types of mitigation required can be found in Chapters 3 and 4 of the Final EIS.

Factor: 0

Restatement 007625 87

Owatonna alternatives O-2 and O-3 have the potential to affect several farmed wetlands, which should be identified and mitigated.

Response

Discussion of the Owatonna Alternatives can be found in Section 3.4 of the Draft EIS. Further discussion and analysis of the alternatives and impacts to farmed wetlands can be found in Chapter 8 of the Final EIS. Based on this evaluation, SEA has determined that Alternative O-4 is the preferred alternative, if the Board approves the proposed project. SEA determined that Alternative O-5 would be the preferred alternative, if it were a feasible alternative. The alternative is not feasible because agreement from UP would be required to reconstruct the existing connection to the I&M Rail Link. The Board does not have the authority to order UP to participate in the O-5 alternative.

Factor: 0

Restatement 007660 10

Some commenters expressed concern about the impacts of coal extraction on the waters of the Powder River Basin, stating that coal acts as a natural water filter and improves water quality.

Response

The purpose of the proposed PRB Expansion Project is to provide access for a third rail carrier to serve Wyoming's Powder River Basin coal mines to transport coal eastward and increase the operational efficiency of DM&E's existing rail line in Minnesota and South Dakota. DM&E's proposal is not intended to increase the amount extracted from the Powder River Basin, but rather, to provide another rail route for transporting coal. An increase in the extraction of coal from the region would be covered by other permitting processes, and is not part of DM&E's proposed action and application before the Board.

Factor:

Restatement 007546 58

Commenters said that the proposed project could interfere with groundwater recharge. Commenters stated that groundwater recharge in the Decorah Edge hydrogeologic area, which is covered with glacial till, could be affected and that the project could also affect soils and vegetation from recharge waters. One commenter said the Final EIS needs to include mitigation for potential interference with groundwater recharge and pollutant attenuation.

One commenter said the Decorah Edge area provides 50 percent of recharge for Rochester' water supply and is part of a high priority groundwater recharge management area. The commenter said that the Decorah Edge hydrology has already received structural damage and has unstable roadbeds, slumping in road cuts, and foundation instability that would be further affected by the proposed project.

Another commenter said that nine percent of aquifer recharge in the Rochester area comes from streams and rivers that have headwaters in wetlands, springs and seeps along the Rochester Bypass. The commenter said that in order to properly evaluate the Bypass options, the Final EIS should examine surface and groundwater resources and recharge areas within two miles of the Bypass and the effects of the proposed rail line on these resources, list existing uses of water resources within two miles of the project area, and list permitting requirements for water protection in the project area.

Response

The Final EIS addresses potential environmental impacts to the Rochester area, including impacts to groundwater recharge from the Decorah Edge hydrogeologic area in Chapter 9 and in the technical appendix M. As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 12 lists SEA's recommended mitigation measures, including mitigation to protect groundwater resources.

Factor: 0

Restatement 007625 77

One commenter stated that if alternatives R-3 or R-4 are selected, field based delineation of wetlands would be required as the National Wetlands Inventory tends to underestimate acreage.

Response

Discussion of the Rochester bypasses can be found in Section 3.3 of the Draft EIS. Further discussion and analysis of the bypasses and delineation of wetlands can be found in Chapter 9 of the Final EIS. Based on this evaluation, SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

Factor: 0

Restatement 007546 90

One commenter noted the failure to use standardized methods to identify jurisdictional wetlands along the path of the upgrade alternatives. Minimal requirements were not met in the Draft EIS or in the 404 application. The public and wetland regulators are unable to verify or predict wetland impacts and are unable to evaluate whether any of the proposed

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Similar

alternatives will adversely impact ecosystems, water quality or groundwater interactions. Another commenter stated that the MPCA 401 Water Quality Certification and the Draft EIS should contain accurately delineated wetlands, using the necessary means to achieve that, rather than using different sets of data.

Another commenter noted that the Draft EIS stated that there are approximately 53.2 acres of jurisdictional wetlands within the right-of-way of the proposed Rochester Alternative, but did not identify the method for determining the wetland impact. The commentor stated that the calculation is too low, and it does not account for hydrologic alterations within the right-of-way that may drain adjoining wetlands and divert surface water flows.

Another commenter stated that no project can receive final approval until wetland permits are received from Federal, state and local wetland regulators. No permit applications have been submitted to the Corps of Engineers, Minnesota Pollution Control Agency, or the local government units responsible for wetland permitting in Minnesota. Another commenter stated that a wetland mitigation plan has not yet been submitted for the project. One commenter stated that there is no discussion of possible conflicts between the proposed Federal action and the local land use plans. Another commenter stated that the national public interest for DM&E's expansion has not been established.

Response

SEA used National Wetland Inventory (NWI) maps and the most recent data available in wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. Wetlands delineation will be completed as part of the COE 404 permit application process. The Omaha District and field office staff verified the wetland and waters delineation completed by DM&E. Site visits were accomplished in:

Eastern South Dakota (8/19/99)

Wyoming (10/25-26/99)

Western South Dakota (7/25-28/00)

Eastern South Dakota (8/1-2/01 to determine the impact of U.S. Supreme Court's SWANCC v. COE decision on jurisdiction)

Western South Dakota (8/23-24/01 to compare NWI data to delineation)

While some revisions were made to the delineation during these visits, acreage changes were not significant.

The St. Paul District believes the level of detail on wetland identification provided in the 404 application is adequate to review the proposal. Information provided in the 404 permit application met the requirements for a determination of a complete application as required under 33 CFR 325.1(d). These details included a combination of National Wetland Inventory map review; interpretation of aerial photographs; and field reviews. Use of off site delineation methodology is allowed in the Corps 1987 delineation manual. Further site reviews may be necessary in specific locations to determine whether all reasonable efforts are being made to avoid and minimize wetland impacts.

It has been generally considered that all wetlands within the railroad ROW would be impacted by the project. The Corps review will also consider secondary impacts, such as those attributed to drainage and/or inundation that may occur beyond the ROW.

Permit applications have been submitted to the Corps, the Minnesota Pollution Control Agency and State/local agencies in Minnesota.

SEA acknowledges that there may be some impact to wetlands outside the immediate project area which have not been quantified. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

SEA is required by NEPA to prepare a Draft and Final EIS for the proposed project to disclose and analyze potential environmental impacts. If the Board approves the project, DM&E will obtain all appropriate Federal, state, and local permits prior to construction. SEA requires that the proposed project may not be consistent with all state and local plans. However, Board authorization to construct and operate the DM&E project would preempt local ordinances.

Chapter 12 of the Final EIS describes SEA's recommended mitigation to address concerns about impacts to wetlands. The national public interest for DME's expansion was discussed in Chapter 1 of the Draft EIS and is further discussed in Chapter 2 of the Final EIS. The Board will consider this information and the public comments in making its final decision on the project. SEA has identified and corrected errors in the Draft EIS in Appendix A (Draft EIS errata) of the Final EIS. SEA has forwarded all comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

Factor:

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Restatement 008673 5

The Corps of Engineers (COE) commented that it should be ensured that the proposed project is in compliance with flood plain management criteria of the appropriate city or county and the appropriate state. One commenter stated that COE must be very thorough in analyzing all of DM&E's requests to alter any of the river or its tributaries along the entire 280 miles of new construction. The analysis should be on a site by site basis for each impact. One commenter stated that the recent decision of the U.S. Supreme Court limiting the ability of COE to regulate isolated wetlands may affect both the Draft EIS and the 404 process. Another commenter stated that there should be an expanded distribution of 404 application with additional public meetings. One commenter questioned how the Board can separate out documents on 404 permits from the Draft EIS and make their availability so limited.

One commenter stated COE 404 permit application is not complete. It is limited to a portion of Alternative C. COE should have its own EIS on a project of this magnitude. EPA recommended that COE hold the permit decision in abeyance on the CWA Section 404 permit until all necessary information has been provided. Another commenter stated that the maps submitted with the 404 application are outdated and do not show many of the physical features of the landscape such as highways, mines, and rail lines. One commenter stated that DM&E did not show to COE how they plan to conquer the Wall Hill, and questions where the money for construction and maintenance will come from.

One commenter questioned by what authority USFWS can recommend to COE that the DM&E Section 404 permit be denied should the Hay Canyon Segment be selected. The same commenter questioned why USFWS did not request denial on the WG Flat Route, and what the rights and obligations of USFWS on a State Game Production Area (Oral Segment) are. Another commentor stated that the no-build option is the only option here, and questions the acres of wetlands identified in WG Flat and Oral Segment.

Response

The Section 404 permitting process is a separate review process led by the COE. If the Board approves the proposed project, DM&E will complete the 404 permit process with COE. Additional information on the COE permitting process can be found in Chapter 3 of the Final EIS.

SEA has provided comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process. Questions related to USFWS recommendations will also be addressed by COE.

The Corps' review will consider direct and secondary impacts to all watercourses and wetland systems. Impacts to isolated waters will be considered in accordance with the Supreme Court's decision in SWANCC. The discrepancy in the wetland impact acres between the DEIS and the Corps public notice can be attributed to more

refined field data being provided as part of the Corps permit application.

The Corps made the application available for review by having copies distributed to several locations, such as city offices and public libraries. This application was determined to be adequate to commence the individual public interest review process. The Corps believes being a cooperating agency and holding several joint public meetings/hearings with the STB was the appropriate procedure in evaluating this project. Preparing a separate EIS would have been an unnecessary expenditure of time and resources.

Issuance of Corps authorization does not obviate the need to comply with other Federal, state and local requirements and flood plain regulations. The Corps permit analysis will consider adverse effects to result from stream encroachments and require adequate mitigation to offset those impacts. The majority of streams to be crossed with the new 280 mile section of railroad involve ephemeral channels. Larger waterbody crossings will have more detailed analysis to evaluate potential impacts to channel stability. The Corps revisited the wetlands and waters delineation and identified those wetland and water features that were affected by the Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (January 9, 2001) (SWANCC). Results in changes to the Corps' jurisdiction will be reflected in their permit analysis. The 404 permit application was adequately distributed and advertised to allow appropriate public review and comment. The information provided in the 404 permit application met the requirements for a determination of a complete application as required under 33 CFR 325.1(d). The Corps is a cooperating agency for this EIS and will rely on its content in making its permit decisions. The Corps will render its final permit decisions once adequate information and analysis has been completed to ensure compliance with the requirements of Section 404 of the Clean Water Act and its implementing regulations. The maps provided with the 404 permit application are adequate to meet Corps permit review needs. The USFWS has the authority to comment on the Corps' permit process under the provisions of the Fish and Wildlife Coordination Act as well as the Endangered Species Act.

The Board is the agency responsible for granting authority for the construction of new rail line facilities. Accordingly, the Board is the lead agency responsible for supervising the preparation of the EIS. Several Federal agencies, including COE the Corps, are participating in the EIS process as cooperating agencies, as described in 40 CFR 1501.6. These agencies issue separate decisions under their authority regarding the proposed project.

Factor:

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Restatement 007438 1

Commenters expressed concern over the impacts of the proposed project on the Mankato Flood Control Project. Commenters said that the tracks for the reconstruction of the existing line, M-3 Alternative, would be located a few feet from the flood wall in downtown Mankato and above the levee in LeHillier. The commenters said the impacts of increased train traffic could have serious consequences on the flood wall, and since the city owns the Flood Control Project, a commenter questions whether the city would have to bear the cost of damages. Commenters requested that extensive testing and analysis of the impacts on the flood wall be done and a new Draft EIS be issued with the results.

The City of Mankato stated that the city must approve any testing criteria for the Flood Control Project and that the city will not allow DM&E to modify the Flood Control Project unless the city approves of the modification plan. The city requested mitigation provisions that require the COE to ensure the integrity of the flood control system; require the COE to monitor the system for problems; ensure that the city will not pay for damages; ensure that the COE indemnifies the city for failure of flood control and guarantees federal disaster relief; and require DM&E to bear all construction and maintenance costs.

Another commenter said that the effects of the Mankato southern route, Alternative M-2, on a COE of Engineers flood control structure near Mankato needed to be studied in depth to determine how the flood control channel would be maintained at the present location and elevation. The commenter said that perhaps a tunnel could be constructed under the rail bed to permit drainage into the river, but this could then make the rail bed unstable over time and would lead to complications in the event of a hazardous materials accident. Another commenter said the M-2 route would cross part of the Indian Creek Flood Control Project, where a stream diversion (Stage 3B-1) redirects water from Indian Creek to the Blue Earth River, and would cross an earthen channel and drop structure at the Blue Earth River. The commenter requested that the COE review the impacts of the M-2 route on flood control plans and advise the city as to adequate mitigation, which may include bridges or rerouting.

Response

In response to public comments, SEA conducted additional analysis of the impacts of the proposed project on the Mankato Flood Control Project and determined that Alternative M-3 would not adversely affect the Flood Control Project. Chapter 7 of this Final EIS and the appendix M describe SEA's additional analysis regarding the Flood Control Project.

SEA conducted additional analysis of the impacts of Alternative M-2 on the Indian Creek Flood Control Project and determined that no impacts would occur. Chapter 7 of this Final EIS describes SEA's additional analysis regarding the Indian Creek Flood Control Project.

Chapter 12 of the Final EIS lists SEA's recommended mitigation measures, including mitigation to ensure the integrity of the flood control project in Mankato.

Factor:

0

Restatement

007624

13

A commenter provided several specific comments regarding the wetlands analysis prepared by DM&E. The commenter stated that DM&E excluded ditches from the photo interpretation. DM&E did not state what year the aerial photographs were taken that they did the wetland interpretation from. DM&E did not provide a caveat about the level of accuracy for the national Wetland Inventory maps they used as reference. DM&E only ground-truthed a ten mile stretch for wetland presence, only 3.7% of the total rail length in Minnesota. DM&E did not define "not existing" wetlands that were dropped from the mapping that had been photo interpreted. DM&E must delineate all of the wetlands that will be affected, not just 28 sites. Also, no direct measurements were made of the construction impact on wetlands adjacent to the rail line. DM&E did not state where the latitude/longitude coordinates were established. In the Regulates column in Block 25 of US Army ENG Form 4345 & Combined Project Application section in Volume I, MPCA regulates the placement of fill in all waters of the state, including MN DNR Protected Waters. The row labeled flood attenuation/water quality in Table 2 in the Appendix to Volume II is misleading, indicating that wetlands smaller than one acre have less value for these functions. The row titled red flag implies that the lack of an adjacent special area also diminishes the value of a wetland. MPCA cannot act on the request for Clean Water Act Section 401 water quality certification because the 404 Permit Application does not satisfy the criteria to process it. After the EIS is completed and the specific wetland mitigation plans and requested information are submitted, MPCA will reinstate their review and the 401 certification process.

Response

The Board is the lead agency responsible for supervising the preparation of the EIS. SEA used National Wetland Inventory (NWI) maps and the most recent data available in wetlands determinations. The use of NWI is an approved, standard method of wetlands determination, and was determined to be an appropriate level of comparison for this project by the cooperating agencies and SEA. The Corps believes the wetland delineation information submitted with the 404 permit application accurately reflects the extent of wetlands in the project area. The Corps will continue to coordinate with the MPCA regarding Section 401 certification. DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

SEA acknowledges that there may be some impact to wetlands outside the immediate project area. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

Tables in the Draft EIS are not intended to diminish the value of any wetlands, but to provide information to the reader.

Factor:

Restatement 007639 22

One commenter stated that the Bureau of Reclamation (Reclamation) expressed concern that the proposed project might cross the Angostura Irrigation District (District), and the District had passed a resolution opposing such a crossing. The commenter said the District provides water for over 12,000 acres and that Alternative C would cost landowners about \$159,000 per year in crop value and increase costs of maintaining the land in the area. The commenter said that the Final EIS needs to take into account the detrimental economic effects of the project on the District. Another commenter indicated that the resolution of the District opposing construction on irrigated lands needs to be discussed.

One commenter asked why the Draft EIS indicated that the Reclamation has the authority to deny DM&E permits to cross the irrigation ditch easements in the Angostura Unit in western South Dakota in Volume VIII-B, Appendix L, page 1-1. The commenter said that Reclamation had stated that it cannot deny issuing permits to DM&E.

One commenter said that Volume IV, page 5-7 of the Draft EIS did not discuss the rural water system in Fall River County, the contract EIS on the Angostura Irrigation Project and the consequences of alternatives as related to the Angostura Irrigation Project as reasonable foreseeable projects in South Dakota.

Response

In Chapter 4 of the Draft EIS and Chapter 3 of the Final EIS, SEA addresses socioeconomic impacts of the potential Angostura Irrigation District crossing.

Although Reclamation has the authority to decide whether to grant or deny easements or permits to cross facilities associated with the District, Reclamation cannot arbitrarily deny such easements or permits. Reclamation generally would deny an application to cross the District if the impacts of the proposed project were so severe or unmitigatable that they would prevent the delivery of water to irrigators. Reclamation has met with DM&E to discuss mitigation and it appears that DM&E could mitigate the adverse impacts of their proposed project. DM&E has also expressed a willingness to work with both Reclamation and the District to achieve mitigation that is acceptable. If the Board approves the PRB Expansion Project, Reclamation would consider the proposed project and the mitigation plan in making its decision on granting DM&E easements and permits.

Section 4.1.4.6.4 of the Draft EIS described the Angostura Irrigation Project and Sections 4.4.6.5.3 and 4.6.2.5.3 discussed the impacts of the various alternatives of the proposed project to the Angostura Irrigation Project and the District.

The Fall River Water Users System is intended to supply potable water for domestic and agricultural uses in Fall River County. As stated in the Draft EIS, the PRB Expansion Project has the potential to damage utilities, such as the Fall River Water Users System, and DM&E would need to coordinate with the owners of all utilities crossed by or adjacent to the existing right-of-way to ensure they are properly protected during construction and reconstruction, and determine if they would require relocation or reconstruction to prevent future damage from rail operations. SEA includes additional discussion and analysis of the rural water system in Fall River County in Chapter 3 of the Final EIS. Chapter 12 of this Final EIS describes SEA's recommended mitigation, including mitigation to protect utilities.

Factor:

Restatement 008099 56

One commenter stated that the comment on page 4-29 about Alternative D that "no wetlands, deciduous riparian vegetation or woody draws would be affected on state lands" is incorrect. Alternative D would pass through and take more right-of-way and therefore more wetland and riparian areas on state land one mile south of Oral.

Another commenter stated that the bypass alternative near his home is considered a flood plain, which is an indication that the measured wetland has been misjudged. The commenter questioned whether any formal wetland audit of the proposed bypass route was performed. Another commenter noted that only 5% of the wetlands were actually delineated on the land in Volume III, Appendix, page 4, section 8.4. Another commenter noted that on Maps 115-119, on the Cheyenne River from MP606 to 621, DM&E plans construction near, on, or in the flood plain. This construction will result in an increase in sedimentation.

Another commenter stated that one reason for developing Alternative C is because of the impacts to wetlands along the Cheyenne River as a result of Alternative B. Section 4.4.7.2 on page 4.4-30 says otherwise. Alternative B has less impact to wetlands than Alternative C.

Response

DM&E prepared its 404 application to COE separately from the EIS process and applied its own wetlands delineation process. SEA provided these comments concerning the 404 permit application, wetlands delineation, and flood plain issues, and the COE permitting process to COE for their consideration as part of their final permit issuance. State and local wetland requirements will be coordinated with COE during the 404 permitting process.

The St. Paul District will ensure that all wetland impacts associated with the M2 and M3 alternatives and the alternatives at Rochester and Owatonna are accurately evaluated in its permit review process.

Potential impacts to wetlands and features, such as the Indian Creek Project area and the Corps flood control projects at Mankato and LeHillier, will be considered during the Corps permit review. To date, the necessary information and testing to determine the potential impacts to the flood control projects has not been made available for Corps review.

General and special conditions will be included in any 404 permit to address revegetation needs, downstream water users, soil erosion and sediment control issues as they relate to impacts to waters of the U.S., as well as other activities that have the opportunity and ability to adversely effect aquatic resources.

SEA and the cooperating agencies developed Alternative C because of the impacts to wetlands for Alternative B. The development of Alternative C is discussed in Chapter 2 of the Draft EIS. Wetland impacts is not the only factor used in determining which alternative is the least environmentally intrusive. Many factors, including wildlife, geology, safety issues, etc. must also be considered in any determination. SEA acknowledges that there may be some indirect impact to wetlands outside the immediate project area due to changes made to the topography. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

The St. Paul District will require additional information regarding aspects such as wetland mitigation and impacts at the Mankato Flood Control projects prior to granting final construction approvals. In addition to the Corps general permit conditions, site specific mitigation may be required to address erosion or sedimentation concerns.

SEA considered the impacts of Alternative D in South Dakota in Chapter 4 of the Draft EIS. Based on the evaluation of Alternative D in the Draft and Final EIS, SEA determined that Alternative D is not a feasible alternative. Chapter 3 of the Final EIS includes additional discussion of the impact of Alternative D on wetlands in South Dakota.

Factor:

0

Restatement

007540

11

Commenters said that the Draft EIS should have analyzed hydrology issues and the impacts of the proposed project on groundwater and surface water in more depth.

1. Groundwater contamination

Similar

One commenter said that since the drinking water for about two-thirds of Minnesota residents comes from groundwater, the Draft EIS needed to detail the effects of the project on groundwater and address mitigation options. The commenter also complained that the Draft EIS contains insufficient analysis of the threats to water resources due to the karst geology of the region, and that such deficiencies could be addressed by doing more site-specific risk analysis, and proposing design modifications and contingency plans. One commenter said that the Rochester Bypass may pollute aquifers and that the Draft EIS did not discuss such impacts in detail. A commenter said Volume III-B, Ch.4, Section 4.4.6.6 should have included information of contaminated water impacts on the health of reservation inhabitants.

One commenter quoted the Draft EIS at 4.4-31, 3.2-18, 4.3-17 and 4.3-18 as evidence that the project would have minimal impacts on groundwater with the implementation of minor mitigation measures. The commenter said that the Final EIS should either state that the project would cause insignificant impacts to groundwater or else detail the impacts and necessary mitigation measures in more depth.

A commenter suggested that the Final EIS include the following statement in the groundwater section: "Nearly all of the DM&E rail line in Olmsted County crosses land mapped as highly susceptible to groundwater pollution." The commenter also said the Draft EIS had no support for stating that alternative R-4 for the Rochester area affects groundwater more than the R-2 alternative. Another commenter said in Section 7.84 of the Draft EIS provisions 53 through 58 are not enough to control erosion, and that suggested Best Management Plans should be used instead.

2. Water need

One commenter said the Draft EIS in Volume VIII-B, Appendix L, page 2-27 states that there is no current estimate on the amount of water needed during construction, which is unacceptable, since in Wyoming and South Dakota water is a precious commodity. The commenter said that water need and other sources of water that will be used must be included in order to develop adequate mitigation. Another commenter said the Final EIS should include more information on groundwater usage and impacts for the various Mankato, Owatonna and Rochester alternatives to make clear which alternatives would pose the least threat to groundwater resources. Another commenter said the Draft EIS should have included information on how the use of herbicides for weed control would affect waters and wetlands. Another commenter said more study needed to be done on the impacts of the Brookings Bypass on drainage. A commenter also said the Final EIS needed to include erosion mitigation measures for Alternatives B and C.

3. Water quality

A commenter also said that more information should be included about the water quality of at-risk streams and water quality sampling should be done prior to construction to establish base line measurement. One commenter requested a list of all waterbodies that would be potentially affected by the project that are impaired and on Clean Water Act 303(d) lists, as well as a list of Outstanding State Resource Waters (those with the highest water quality standards). Another commenter said that the Final EIS should discuss South Dakota Surface Water Quality Standards, the need for DM&E to comply with those standards and the repercussions of DM&E's noncompliance.

Response

1. Groundwater contamination

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. Appendix M of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater.

As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 9 includes a complete description of the evaluation and the rationale for SEA's determination, including SEA's additional analysis regarding potential impacts to the well field and the karst geology of the region.

2. Water need

As stated in the Draft EIS, most of the water that would be used during construction of the proposed project would be taken from private sources, such as local wells, subject to agreement with landowners. Although the additional water demand from these wells could result in local drawdowns of groundwater around the individual well, reducing their yields, yields would be expected to return to normal once pumping demands returned to previous amounts.

Chapter 12 of the Final EIS describes SEA's final recommended mitigation requirements, including mitigation to protect water resources from the use of herbicides.

The Final EIS describes the Mankato area alternatives in Chapter 7, the Owatonna area alternatives in Chapter 8, and the Rochester area alternatives in Chapter 9. Chapter 6 of the Final EIS describes the Brookings area alternatives. Chapter 12 describes SEA's final recommended mitigation requirements.

3. Water quality

The issue of water quality sampling for the proposed project will be addressed by the water quality permitting processes of other agencies. For example, the COE 404 permitting process.

Chapters 3 and 4 of the Final EIS describe the impacts of the proposed project on impaired waters.

Factor: 0

Restatement 000017 3

Commenters stated that construction activities from the proposed project would affect the surface waters of the project area by placing sedimentation in waterways, disturbing the stream corridors and creating stream channel modifications. One commenter said that the movement of earth for the project would cause ground damage and runoff into the Minnesota River in the form of silt and pollutants. Another commenter said the eastern end of the project could lead to pollution of the Mississippi River. Another commenter said the project would cross Garvin Brook fifteen times and the replacement of bridges and culverts would lead to high sediment deposits into the stream.

One commenter expressed concern that the project would contaminate the Blue Earth River and low-lying areas. Another commenter said fill in the Blue Earth River would reroute the river and cause a fifty percent reduction in the Indian Creek Flood Control Project, which might cause the water to flow faster and lead to erosion of the new bank, affecting the integrity of the rail bed. A commenter also said that the impacts of the fill needed for the bridge over the river should be analyzed more to evaluate downstream impacts. Another commenter said the Rochester alternatives R-3 and R-4 would cross eight perennial and 28 intermittent streams and would cause more impact than if the existing line were used. The commenter said the cut and fill would be extensive in Salem Creek, the South Fork Zumbro River, and the Badger Run/Highway 52 Crossing.

One commenter quoted the Draft EIS at 4.4-26, 4.4-27, 3.2-16, 3.2-17, 4.3-14, 4.3-15, 3.2-17, and 4.4-27 as evidence that project activities would cause only minor, mitigable impacts to surface water. One commenter questioned the Draft EIS's seemingly contradictory statements in Chapter 3, Section 3.2.4, which said that the project would not alter the drainage pattern of streams and rivers when replacing culverts and bridges, but also said that the drainage might need to be channeled or relocated. Another commenter said

although the Draft EIS states that bridges and culverts could lead to sediment and turbidity disturbance, it fails to quantify or detail the nature of the disturbance and does not state who will bear the responsibility for the impairment of waters.

Response

Although rail line reconstruction and replacement of bridges and culverts could lead to increases in total suspended solids (TSS) or sediment, the installation of properly sized bridges and culverts, proper maintenance, and periodic clearing of debris would allow water to follow its normal course and not back up into new areas. Although the Draft EIS in Section 3.2.4 did state that some minimal channelization or relocation of drainages may be necessary for installation of bridges and culverts, it went on to state that because the reconstruction activities would occur only in the immediate vicinity of the crossing structure, and the design of bridges and culverts would maintain adequate flow rates, stream and drainage impacts would be minimized, keeping intact the drainage patterns of area streams and rivers.

During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition and the derailment needing to occur at a perennial stream crossing, impacts to surface waters from derailments are unlikely. The infrequent (necessary only once every several years) disturbance to bottom sediments and stream banks associated with bridge or culvert maintenance activities would be the most likely impact during rail line operation. Such disturbances would be minor because they would involve little in-stream work or site disturbance. Additionally, during railroad operation, herbicide application within the rail line right-of-way to control vegetation could reduce water quality if herbicides are improperly applied or allowed to enter surface water.

Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA’s recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on water resources from the proposed project. SEA’s recommended mitigation measures to protect surface water resources are included in Chapter 12 of the Final EIS.

Factor:

0

Restatement 003660 1

Some commenters stated that various state, local and Federal water quality permits would be needed for the proposed project. One commenter said DM&E would need to obtain a Pennington County Flood Plain permit before working in the 100-year floodplain in the Cheyenne River area. Another commenter said each marshaling yard would require a NPDES permit, since more than five acres would be disturbed. A commenter said that in Section 7.8.4 of the Draft EIS condition #52 was unclear, and suggested changing the condition to require DM&E to obtain an NPDES permit for construction. Other commenters questioned how an NPDES permit can be obtained for impaired waters, such as Garvin Brook, the Bad River, and the Cheyenne River, since Section 303(d) of the Clean Water Act at 40 CFR 122.4(i) states that impaired waters cannot be further impaired. One commenter asked whether EPA needs to be a cooperating agency, since EPA oversees the NPDES permit program.

The Minnesota Pollution Control Agency (MPCA) requests the total amount of excavation and fill for the proposed project in Minnesota and the MPCA might require a State Disposal System Permit to dispose material removed from surface waters.

The Minnesota Department of Natural Resources (MDNR) would require Protected Waters permits for impacts to protected waters. MDNR recommends that new bridges and culverts be installed to protect channel capacity and that natural stream beds be kept intact as much as possible. MDNR states that the Draft EIS should have included a section on impacts to floodplains in Section 3.2 to complement the existing conditions floodplains section, Section 3.1.5.2. MDNR also states that the fill placed in pinch point #1 in Blue Earth County should be regulated by Best Management Practices.

One commenter said the Final EIS should require DM&E to get approval from the South Dakota Department of Environment and Natural Resources (DENR) in order to use herbicides that could affect water or wetlands, and to get permits from DENR to control storm water runoff. Another commenter points out that DM&E need to obtain NPDES

permits (from state environmental agencies) to control storm water discharges is a connected action to the proposed project, but not discussed in the Draft EIS.

Response

SEA has considered the mitigation suggested for water resources in these comments. SEA had recommended mitigation measures it believes are practicable and within the scope of the Board's conditioning power. Chapter 12 of the Final EIS describes SEA's final recommended mitigation, including mitigation to protect water resources from project-related impacts, and mitigation to ensure that DM&E obtain appropriate permits to protect water resources. The permitting processes incorporate measures to prevent the further impairment of impaired waterbodies.

Since EPA does not need to grant a license or a permit for DM&E's proposed project. Although EPA is not a cooperating agency in this environmental review process, SEA worked closely with EPA in the development of the Draft EIS. SEA submitted the Draft to EPA's Office of Federal Activities (OFA) for its review and comment. OFA responded by issuing a detailed comment letter. Representatives of EPA also attended public comment meetings held after issuance of the Draft EIS. EPA will review and rate the Final EIS.

Factor: 0

Restatement 000197 3

Some commenters expressed concern that the proposed project would lead to area flooding. One commenter said the project could change the structure of trestles and bridges on the Bad River, which currently permit water to go under the railroad right-of-way. The commenter said if the bridges and trestles become a barrier to the water, property damage will occur.

Another commenter said the DM&E project could flood farmland and cause farmers financial ruin. One commenter said the Brookings Bypass might flood upstream roads and farms, due to the crossing of flood plains and the building of a railroad grade, while another commenter pointed out the flat topography of the Brookings Bypass. A commenter also said that the Brookings Bypass might cause flooding problems by channeling the 6 Mile Creek watershed, and the flooding impacts should be studied in more depth.

Response

Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, the proposed project would not cause significant flooding problems in the project area. Chapter 12 of the Final EIS describes SEA's final recommended mitigation, including mitigation measures to prevent flooding problems.

Section 4.9.5 of the the Draft EIS described the impacts of the Brookings area alternatives on water resources. As described in Chapter 6, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Brookings area. SEA determined that the existing route through Brookings, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. Chapter 6 of this Final EIS describes SEA's additional analysis regarding the environmental impacts of the Brookings area alternatives.

Factor: 0

Restatement 000244 3

Commenters asked for more information on how the proposed project would affect waters listed as impaired or protected on Federal and state water quality lists. Commenters specifically questioned the impacts on the Cheyenne River and the Bad River and requested that appropriate mitigation be devised in the EIS and the 404 permit application. One

Similar

commenter asked how existing Federally-funded efforts under Section 319 of the Clean Water Act for the Bad River would be affected by the project and wanted to find out what other impaired waters would be affected by the project. A commenter said that although the Draft EIS indicates that Alternative C supposedly stays away from the Cheyenne River, page 4.4-28 lists the mileage for each alternative along the Cheyenne River as follows: 21.9 miles for Alternative B, 20.8 miles for Alternative C and 13.5 miles for Alternative D. Another commenter said the part of the Cheyenne River between Box Elder Creek and the highway bridge near Creston contains fragile grasslands and river resources that need to be protected. Another commenter said impacts to the watersheds and tributaries of the Cheyenne River could affect the Pine Ridge Indian Reservation' water sources and further harm the Sturgeon Chubb, which the U.S. Fish and Wildlife Service has designated as threatened.

Commenters also pointed out that the impaired Garvin Brook trout stream in Winona County would be crossed 8 times by the proposed rail line, so the EIS should detail the impacts for each crossing and devise site-specific mitigation. One commenter said underground karst conduits carry pollutants to Garvin Brook and the project' impacts on such pollution need to be explored in more depth. Another commenter said that DM&E has already polluted Cascade Creek through spills, and mitigation must be devised to protect water resources from the effects of such spills from proposed DM&E activities.

One commenter said that the project would affect ten streams that are Minnesota Protected Waters, and that the proposed Rochester Bypass would cross the headwaters of three of those watersheds; Zumbro River, the Root River, and the Whitewater River. The commenter said the Final EIS should analyze the impacts to the watersheds in more depth. Also, active watershed restoration projects concern the Zumbro River and the Whitewater River, so the commenter requested that the agencies carrying out the projects be contacted to evaluate the impacts of the proposed Bypass on the projects.

Other commenters requested information on how pristine waters would be preserved. One commenter said Alternative O-3 would affect the Izaak Walton Creek, which contains cleaner waters than the streams that would be affected by the other alternatives. Another commenter expressed concern about impacts to the Mississippi River.

Response

As stated in the Draft EIS, during construction activities, spills of fuel, lubricants, solvents, or other hazardous materials at stream crossings could introduce contaminants into the water, reducing water quality. However, any contaminants are expected to be present in small amounts, consisting of that amount necessary for operation of equipment and insufficient to cause significant impacts to surface water quality beyond local reductions during construction. Construction impacts to surface waters would primarily occur to those the perennial streams crossed. It is likely many of the intermittent stream crossings could be installed and reclamation measures implemented without water ever being present in the stream channel. In these instances, should a spill of hazardous substances occur, it could be contained and cleaned up without affecting surface water resources.

During rail line operation, surface waters could be affected in the event of a derailment, however, due to the rail line being maintained in good condition and the derailment needing to occur at a perennial stream crossing, impacts to surface waters from derailments are unlikely. The infrequent (necessary only once every several years) disturbance to bottom sediments and stream banks associated with bridge or culvert maintenance activities would be the most likely affected during rail line operation. Such disturbances would be minor because they would involve little in-stream work or site disturbance. Additionally, during railroad operation, herbicide application within the rail line right-of-way to control vegetation could reduce water quality if herbicides are improperly applied or allowed to enter surface water.

The Draft EIS addressed impacts to surface waters in Chapter 3 and Chapter 4.

Chapter 4 of the Final EIS describes SEA's additional analysis regarding impaired waters. Chapter 12 of this Final EIS describes SEA's final recommended mitigation for surface water resources. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts to surface water resources from the proposed project.

SEA is not recommending the Rochester Bypass as a viable alternative. Therefore, potential environmental impacts of the Bypass will not occur.

In Chapter 8 of the Final EIS, SEA presents additional discussion of potential environmental effects on Alternatives O-3, O-4, and O-5. SEA has identified O-4 as the environmentally preferable alternative.

Factor:

0

Restatement

000234

5

Commenters expressed concern that the proposed project would adversely affect sources of groundwater. One commenter said that two-thirds of Minnesota residents use groundwater as their primary drinking water source, and another commenter said that the Winona area' groundwater comes from a high permeability surficial alluvial aquifer in a shallow water table. A commenter also said that the proposed project could affect the water and wetlands in the Minnesota River Valley.

Another commenter alleged that the Draft EIS in Chapter 4, Section 4.9.5.3 incorrectly stated that the project would not affect groundwater, because the North Brookings City well field lies within 100 feet of the proposed Bypass, and an already shallow aquifer supplies water to the well field. One commenter questioned the statement in the Draft EIS in Volume III-B at page 4.4-31 that indicated that although the construction phase of the project would reduce the amount of water in groundwater wells, the well would be restored and not adversely affected during project operation.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. Appendix M of the Final EIS describes SEA's additional analysis regarding groundwater resources, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for potential groundwater impacts. Based on the analysis described in the Draft and Final EIS, SEA determined that, if SEA's recommended mitigation measures and recommended alternatives are implemented, there would be insignificant impacts on groundwater resources from the proposed project.

The Draft EIS stated that DM&E has indicated it would likely obtain some of its water during construction from local wells, subject to agreements with landowners, which could lead to local drawdowns of groundwater around the individual wells, reducing their yields. Wells used for construction water needs that experience reductions in yield would be expected to return to normal during project operation, because yields would be expected to return to normal once pumping demands returned to previous amounts.

Factor:

0

Restatement

001339

1

One commenter pointed out that DM&E must mitigate wetland impacts. Under Minnesota law, two acres of new wetland must be constructed for every one acre destroyed. Higher quality wetlands must be mitigated at a greater ratio. Use of appropriate BMPs is essential to prevent sedimentation and degradation of water quality.

Another commenter stated that the Draft EIS indicates potentially significant impacts on wetland resources, but with mitigation, more and better wetlands could result. DM&E has agreed to avoid impacts through the use of BMPs (written in Volume I of the 404 Permit Application) and alignment selection followed by compensation for unavoidable impacts. The Final EIS should fully discuss and consider these mitigation measures in assessing the level of project impacts on wetlands.

The same commenter stated that the construction of the Central Yard will result in the conversion of 55 acres of conservation easements to railroad uses. DM&E must get a special use permit from FWS. Any permanent loss of habitat and other conservation values impacted by the Central Yard would be mitigated and offset through mitigation, permit stipulation, the exchange of wetlands of equal or greater resource values, or a combination of such measures.

Response

SEA acknowledges that some wetlands will be impacted during railroad construction, but with mitigation, more wetlands may result. SEA's recommended mitigation measures, including mitigation plans developed with state agencies and USFWS, are included in Chapter 12 of the Final EIS. These address potential concerns about impacts to wetlands. The COE will determine the actual quantities of wetlands which will require mitigation, wetland construction, and replacement ratios used.

Factor:

0

Restatement

001098

3

Commenters expressed concern that the proposed project could lead to contamination of groundwater during construction and operation of the rail line. Commenters said the karst geology of the area could easily cause above-ground contaminants to seep into groundwater supplies. For example, commenters said that the City of Skyline contains perched aquifers, or aquifers that are part of the local surficial aquifer system that connect with the deeper Cambrian-Ordovician aquifer system. The city receives water from wells supplied by these interrelated aquifers, so contaminating one part of the system would lead to contamination of the entire water supply. The commenters said that building the Mankato southern route, the M-2 Alternative, would cut into the Jordan Sandstone of the area, exposing the groundwater to any possible spill, and more analysis of this potential problem should be done.

Commenters pointed to similar problems in the Rochester area. The hydrology of both the in-city and proposed Bypass routes could lead to groundwater contamination. Commenters said there are three types of glacial geologic terrain in the Bypass areas that could be easily contaminated from surface spills: glacial till areas, sinkholes and caves, and alluvial and fluvial terrain. One commenter said studies have already been conducted finding that Rochester area hydrology leads to unstable roadbeds and foundation instability, and such hydrology could lead to greater contamination of the water supply. Another commenter said that there have been nine rail accidents in Olmstead County in the Rochester/Zumbro Aquifer-shed, which is the primary source of drinking water for the City of Rochester, and three have been within the city's Wellhead Protection Area, which is an area designated for special protection under the Federal Safe Drinking Water Act. Another commenter questioned the effects of the rail bed grade and discharges on groundwater in Olmstead County.

Another commenter said the Brookings Bypass could lead to contamination of the entire city's water supply, because the proposed route would pass directly over the city's wells. One commenter said that the Draft EIS' statement in Volume III-B, page 4.9-16 that the proposed project would have no significant effects on groundwater assumes that there will be no transportation of hazardous materials. The commenter said that the Board needs to condition project approval on the transportation of hazardous materials, and that if such a condition cannot be imposed, the effects of possible hazardous material contamination of groundwater needs to be evaluated.

Response

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikelihood of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. Appendix M of the Final EIS describes SEA's additional analysis regarding groundwater resources and karst geology, and Chapter 12 of this Final EIS describes SEA's final recommended mitigation for groundwater.

The Draft EIS discussed Minnesota's aquifer system in Chapter 3, Section 3.1.5.4. Chapter 4, Sections 4.1.5.4 and 4.2.5.4 addressed the aquifer systems of South Dakota and Wyoming, respectively. As described in Chapters 5 (Pierre), 6 (Brookings), 8 (Owatonna), and 9 (Rochester) of the Final EIS, SEA is not recommending any bypasses as mitigation for potential environmental impacts. As a result, groundwater impacts would not occur along the bypass routes. Chapter 7 describes SEA's evaluation of the Southern Route Alternative in the Mankato area, including potential groundwater impacts.

Factor:

Restatement 003016 5

One commenter stated that because 14.2 acres of wetlands are destroyed in Option B and 3.7 acres in Option A, Option B is not appropriate for the Middle East Staging and Marshaling Yard. 3016-5, 3809-27. In addition, the comment that 4.2 acres of wetlands are located within proposed rail yard site is inaccurate and misleading. Other wetlands would be adversely affected because of changes to the topography.

Response

Based on the evaluation in the Draft and Final EIS, SEA determined that Option B is the environmentally preferred alternative for the location of the Middle East Staging and Marshaling Yard. The mitigation of potential wetlands impacts is described in Chapter 12. Specific detailed wetlands mitigation would be included in any permit from the COE 404 permitting process.

Chapter 4 of this Final EIS provides additional analysis and data regarding potential environmental effects of rail yard construction and operations.

Factor:

Restatement 004575 14

Commenters stated that miles of wetlands would need to be filled in. Wetlands and Fens are Federally protected and necessary to ensure the water quality of the country. 4575-14 Groundwater seeps and springs sustain wetlands along the Rochester Alternative, and any disturbance could result in interruption to the hydrologic pathways. 7561-62, 7567-59 A hydrologic analysis should be conducted to determine possible disturbances to the hydrology of calcareous fens along the bypass. Any construction will require the preparation of a fen management plan approved by the Commissioner of Natural Resources

One commenter stated that some of the most biologically diverse wetlands in Olmsted County occur in the Decorah-Edge hydrogeologic setting and in the 187.8 acres of wetlands within the right-of-way in Minnesota. The size and extent of reasonably connected wetlands (outside the right-of-way) should be assessed or disclosed. The full extent of "loss of wetlands that occur outside the proposed right-of-way" must be analyzed and disclosed in the Final EIS. Under alternative R-3 and R-4 public lands would be affected by the bypass. The fens located in Rock Dell Township have a watershed area that extends out 2 miles in each direction according to the Minnesota DNR.

One commenter requested that the Final EIS reflect the wetlands concerns associated with R-2 discussed in Wheeler, Exhibit 11, and the fact that the June, 1999 version of R-4 would avoid calcareous fens.

One commenter stated that an extremely wet area with springs is located directly under the proposed bypass route adjacent to Cascade Creek, and another is located next to US Highway 14. Another commenter stated that no mention has been made of the resolution passed in November 1999 by the Angostura Irrigation District members opposing construction across irrigated lands in the district.

Response

SEA acknowledges that some wetlands will be impacted during railroad construction. Chapter 12 of this Final EIS includes mitigation measures, including mitigation plans developed with state agencies and the USFWS, to address potential concerns about impacts to wetlands.

Fens are wetland communities of special concern in the Rochester area. Based on the evaluation in the Draft and Final EIS, SEA has determined that Alternative R-2, the reconstruction of the existing rail line through Rochester, is the environmentally preferable alternative. Because SEA is not recommending the Rochester Bypass Alternatives, no fens will be affected in the Rochester area and no further discussion of fens is necessary. Likewise, no further discussion on public lands affected by alternatives R-3 and R-4 is necessary. Further discussion of the Rochester alternatives can be found in Chapter 9 of the Final EIS.

SEA acknowledges that there may be some impact to wetlands outside the right-of-way and the immediate project area which have not been quantified. SEA determined that these impacts will be minor and are appropriately addressed in the COE 404 permit process.

Construction across irrigated lands is addressed in Chapter 4 of the Draft EIS and Chapter 3 of the Final EIS.

Factor: 0

Restatement 001097 4

One commenter stated that the wetland portion of the Brookings section seems impractical. Alternatives B-1 and B-2 are stated as affecting 5.8 acres of wetlands encompassing 12 intermittent streams and a river. Alternatives B-3 and B-4 are stated as affecting 20 intermittent streams and a river. Almost twice the number of crossings affect a lesser acreage of 5.1 acres. Another commenter stated that any new bypass would adversely affect wetland areas in the Brookings area and result in increased flooding.

Response

Discussion of the Brookings Alternatives and acreage affected and a discussion of potential flooding impacts can be found in Section 4.9.5 of the Draft EIS. Based on public comment, SEA has included additional discussion and analysis in Chapter 6 of the Final EIS. Based on the evaluation in the Draft and Final EIS, SEA determined that the existing route through Brookings is the environmentally preferred alternative, if the Board approves the proposed project.

Factor: 0

Restatement 007540 22

Commenters alleged that the Draft EIS contained inaccurate analysis of water quality impacts. One commenter said the Draft EIS at Section 3.1.5.4 relied on old data to list the locations and uses of various aquifers, and excluded information about the actual groundwater use in the area or groundwater receptors located along existing or proposed rail lines. Another commenter said the Draft EIS should have examined the groundwater contamination issues due to the karst topography for the in-city Rochester route in Section 3.3.2.5.3, while a commenter found Section 3.2.7.3 contradictory, since the Draft EIS stated that there would be no significant impacts to groundwater or wells, but did state that spills could cause serious impacts on vulnerable aquifers. A commenter suggested replacing the word 'hould' to 'hall' not lead to significant impacts to groundwater, in Section 3.2.7.3 on page 3.2-19.

A commenter said the Draft EIS underestimated the significance of a spill on groundwater in Table 5.1 - Summary of Environmental Impacts: South Dakota and Wyoming New Construction, by stating that an accidental spill would be unlikely. Another commenter requested information in the Final EIS to support the Draft EIS statement that spills would lead to limited water contamination, in Section 3.3.1.5.1 regarding the Mankato area alternative, Alternative M-2. The commenter asked to find out what the contaminants would be and noted that any spill of contaminants would violate state water quality standards.

Similar

One commenter said the Draft EIS incorrectly stated that the Brookings area alternative, Alternative B-2, would affect Lake Goldsmith in Chapter 4, because the water would need to go uphill to affect the lake. A commenter said the statement on page 4.4-27 of the Draft EIS indicating that work can be completed in intermittent streams without water being in the streams cannot be carried out unless there are prohibitions preventing DM&E from working in wet areas.

One commenter said that Section 3.2.7.1 of the Draft EIS states that the proposed rail line would cross 15 irrigation ditches in Minnesota, but actually these are probably drainage ditches that feed into surface waters. The commenter said the number 15 appears to be too small, so the information source should be cited and the Draft EIS should take into consideration the effects of karst geology leading to contamination of surface waters distant from a spill site.

Another commenter said that on page 4.9-29 the Draft EIS incorrectly states that trout streams are located throughout South Dakota, since in South Dakota trout streams are localized in the Black Hills region. Another commenter pointed out that page 3-67 of Volume VIII-B, Appendix L of the Draft EIS incorrectly states that wells are privately owned and used for irrigation, when actually the wells are used for domestic and livestock needs.

Another commenter said the Draft EIS stated incorrect information relating to the Minnesota Department of Natural Resources Protected Waters Statute, because most protected waters are not associated with wildlife management areas or other public lands. The commenter also said that all the lakes listed on page 3.1-25 are protected waters, and that although the Draft EIS states that Dodge County contains no protected waters that would be crossed by DM&E, the protected Dodge Center Creek and Masten Creek would be crossed. One commenter said that provision 63 in Section 7.84, Water Resources Mitigation, does not clearly state when the railroad would be conducting construction outside the right-of-way. Another commenter said Table 5.3-2 should list the cumulative effects to surface water and wetlands as significant long term adverse, instead of significant temporary adverse.

Response

The Draft EIS examined groundwater contamination issues for the Rochester area alternatives in Section 3.3.2.5.3. The Final EIS addresses water resource effects for each of the Rochester area alternatives in Chapter 9. As described in Chapter 9, SEA completed a thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area. SEA determined that the existing route through Rochester, with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project.

As stated in the Draft EIS, possible contamination to groundwater from a spill of hazardous substances from the proposed project is unlikely. The limited quantity of fuel and contaminants that would be present during construction and the unlikeliness of a train derailment releasing contaminants, due to the increased safety of rail operations and the limited amounts of contaminants transported by DM&E, would limit impacts to groundwater. However, in response to public comments, SEA conducted additional analysis of potential impacts to groundwater resources. In Appendix M of the Final EIS SEA provides additional analysis regarding groundwater resources, and in Chapter 12 of this Final EIS SEA describes final recommended mitigation for groundwater.

Chapter 12 of the Final EIS also includes recommended mitigation measures to ensure that DM&E conduct activities in stream beds during low-flow periods or when the stream is dry. In the Final EIS SEA describes the Mankato area alternatives in Chapter 7 and the Brookings area alternatives in Chapter 6.

SEA used published sources of information to analyze water quality impacts, as referenced in the Draft EIS. The Final EIS has updated information that was determined to be inaccurate in the Draft EIS.

Errors in the Draft EIS, and corrections to them, are addressed in Appendix A.

Factor:

Restatement 007624 28

Commenters said DM&E needed to include more information in its 404 COE permit application. One commenter said DM&E needed to identify all the water supply sources in the project area and evaluate them for impacts. A commenter said in the 404 permit application the total stream impacts for Minnesota were not the same in Table 2 of Volume I and Volume V, and in Volume I the cumulative impacts of all watersheds that empty in the Mississippi River should be added to the list of stream crossing impacts. The commenter said that DM&E should have cross-referenced bridge or stream crossings and proposed wetland mitigation sites in Volume II to the map in Volume V, and the application did not contain a consistent format for information presentation. The commenter also said that DM&E needed to analyze its proposal for consistency with Minnesota's wellhead protection plans.

However, one commenter said that the information in the permit application indicates that DM&E will undertake more mitigation than stated in the Draft EIS. For example, Volume 1, attachments B&C of the permit application indicate that DM&E will adopt Best Management Plans to prevent storm water pollution and erosion. The commenter also indicated that DM&E will develop methods to trap sedimentation from reaching water and to revegetate disturbed areas after construction to avoid water quality degradation, and would perform work during low or no flow periods.

Response

DM&E's 404 permit application describes DM&E's proposed action and mitigation for potential impacts to wetlands and waterways, in compliance with the Clean Water Act. COE is the responsible agency for the 404 permitting process, which would be completed after the Board makes its decision on the proposed project. During preparation of the Draft and Final EIS, SEA coordinated closely with COE to ensure that the 404 permit application and the EIS provided consistent information. Where appropriate, this Final EIS updates information in the Draft EIS. COE will include general and special conditions in any 404 permit and will address revegetation needs, downstream water uses, soil erosion, and sediment control issues as they relate to impacts to waters of the U.S., as well as other activities that have the opportunity and ability to adversely affect aquatic resources.

The Omaha District and field office staff verified the wetland and waters delineation completed by DM&E. Site visits were accomplished:

8/19/99 Eastern South Dakota

10/25-26/99 Wyoming

7/25-28/00 Western South Dakota

8/1-2/01 Eastern South Dakota - to determine impact of U.S. Supreme Court's SWANCC v. COE decision on jurisdiction

8/23-24/01 Western South Dakota to compare NWI data to delineation

While some revisions were made to the delineation during these visits, acreage changes were not significant.

Factor:

Restatement 007540 19

One commenter stated that it is incorrectly stated on page 3.1-28 that a site must have hydric soils, a dominance of hydrophytic vegetation, and wetland hydrology to be classified as a wetland. It appears that Draft EIS should really be using the term "incidental" wetlands - those formed in uplands by an activity or project, rather than "jurisdictional".

One commenter noted that the various rail yard options and the Rochester bypass options depicted in section 3.3.2, are not shown in the COE 404 application materials that were submitted to MPCA on October 13, 2000.

One commenter questioned the number of acres of wetlands identified in WG Flat and Oral Segment on page ES-45, and requests that the land and acres along right-of-way which may be taken be identified. Another commenter stated that the figures are incorrect in Table 3- 64 on page 3-97. The table lists 6.1 miles and Table 3-66 lists 3.3 miles. A commenter stated that wetlands within the WG Flat are much more than that.

Page 4.1-30, paragraph 2, sentence 2 indicates that glacially carved wetlands in South Dakota hold water throughout the year, which is incorrect. Additional language is needed to indicate USFWS's involvement in SD. USFWS must review permit applications. They may concur or recommend denial depending upon the effects. On page 4.3-16, paragraph 5, sentence 3, the county wetland acreage table is 4.1-7 rather than 4.1-12.

Response

SEA reviewed statements made in the Draft EIS pertaining to incidental and jurisdictional wetlands and determined those statements to be appropriate. Several commenters appear to be comparing acreage estimates in the Draft EIS with the detailed wetlands delineation estimates prepared by the Corps. SEA recognizes that there were some acreage discrepancies in the Draft EIS in South Dakota, Minnesota, WG Flat, and Oral Segment. Acreage estimates are discussed further in Chapter 3 of the Final EIS.

The Omaha District of the Corps of Engineers does not draw a distinction between jurisdictional and incidental wetlands. Wetlands not considered jurisdictional are described, on a case by case basis, in the preamble of the Corps' Regulatory Program Regulations at 33 CFR Part 328 (Vol. 51, No. 219, dated 11/13/1986).

The Draft EIS stated that glacially carved wetlands in SD "often" hold water throughout the year. "Often" implies that there are times when they may not hold water, therefore the statement is appropriate.

SEA has provided the comments concerning the 404 permit application and COE permitting process to COE for their consideration as part of their final permit issuance.

The COE has an obligation to solicit input from other applicable Federal agencies (including USFWS) as part of permitting projects under the Clean Water Act. As part of this input, USFWS can make comments or recommendations based on project impacts to USFWS resources. Agency responsibilities in the EIS process are discussed in Chapter 1 of the Draft EIS.

Topic: T16-Transportation Systems
SubTopic: T16B-Rail Systems
Factor: F02D-Analysis - Mitigation

Restatement 000404 88

General Mitigation

A number of commenters expressed concern about the mitigation language in the Draft EIS. One commenter stated that language describing the "regular and prompt repair of construction fencing" should be quantified. Another commenter expressed concern that the mitigation phrases like "to the extent possible" and "where appropriate" should be stronger. Another commenter stated that language that the Applicant would "minimize" the train blockage of crossings to the extent possible should be tied to enforceable guidelines to be followed by the Applicant.

Similar

Other general mitigative suggestions included the covering of rail cars, the consideration of tunnels, and the consideration of elevated structures in areas where views are important and cut and fill might be expensive. One commenter stated that a functioning spark arrester should trap or pulverize exhaust carbon particles to a size below .023 inches in diameter as they are expelled from the exhaust. One commenter requested mitigation language that "grinding operations shall be conducted only after consultation and approval of local fire authorities, such as the County Fire Warden" as a measure to prevent fires along the joint track during hot, dry and windy conditions.

One commenter requested that all mitigation in the state of MN be the sole responsibility of DM&E, including safety improvements and grade separations.

Response

SEA has recommend mitigation in response to the potential impacts associated with the proposed project. SEA recommended that the Applicant consult with appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. Implementation of all grade crossing protections will be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. As agreed to by the Applicant, the Applicant shall pay 90 percent of the costs associated with these project-related grade crossing protections.

Additionally, specific mitigation, that include timing considerations, will be provided to communities that have executed Negotiated Agreements with DM&E. SEA recommends that DM&E will complete grade crossing protections prior to moving annual tonnage level of coal (20 million tons, 50 million tons, or 100 million tons) specified in its plan and certify to the Board such completion as part of its quarterly reports.

SEA also recommends that DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Chapter 12 of the Final EIS describes SEA's recommended mitigation. SEA recommends that the inspection of fencing conducted regularly and damaged fencing repaired promptly.

SEA acknowledges the concerns expressed by commenters for coal dust from cars. The rail cars used to haul coal are principally owned by utilities and are beyond the control of the Board. Additional information about fugitive coal dust can be found in Chapter 3 of this Final EIS. Specific mitigation measures are presented in Chapter 12 of the Final EIS. Comments and responses related to the aesthetic impacts of the project on views are found in Chapter 3 of this Final EIS. To the extent practicable, SEA recommends that the Applicant's plan for fire prevention and suppression shall ensure that all locomotives are equipped with functioning spark arrestors on exhaust stacks.

The Surface Transportation Board has limited authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority.

Factor: F01G-Alternatives - Rochester Bypass

Restatement 008024 9

The Rochester Chamber of Commerce will meet to discuss the integration of the bypass into other transportation activities.

Response

SEA is recommending the Rochester Bypass as mitigation for the proposed project. A discussion of the Bypass impacts and SEA's recommendation are found in Chapter 9 of this Final EIS.

Factor: F02A-Analysis - Data Accuracy**Restatement** 008099 9**Route Planning and Engineering**

Several commenters expressed concerns about the rail planning and engineering described in the Draft EIS. One commenter indicated a discrepancy for the total miles of new rail. Alternative D was listed as 360 miles compared to 273.8 miles for Alternative C, however, Alternative D utilizes existing line south of Smithwick to Wasta. Another commenter requested the total number of miles that would not be upgraded. One commenter stated that if grade were an important criteria, then the existing route through Rapid City would be preferred. However other places in the document say that distance is the primary consideration. 8099/44 One commenter noted that achievement of a 1% grade would be difficult throughout the route. The same commenter noted that profiles were shown for Alternative D but not for B & C.

One commentator noted that the Draft EIS stated the rebuild would require a right-of-way wider than 200 feet but that it was unclear if DM&E owned the necessary right-of-way. The commenter requested the analysis of right-of-way impacts. A commentator noted that final design information was not available making impacts difficult to quantify. The commentator requested a second Draft EIS so design information could be presented and commented on by the public.

Response

SEA recognizes that the Draft EIS presented a wide combination of alternatives and segments. The preferred alternative, Alternative C, will consist of approximately 580 miles of upgrade between Wall, SD and Winona, MN.

Factor: F01B-Alternatives - Rebuild

24

Restatement 006315 8**Operations**

A number of commenters expressed support for the project as it relates to DM&E operations. Commenters stated that the project would: provide upgrades and improvements to the operations; increase service to farmers; carry passengers; open new markets; lower shipping costs by rail and barge; alleviate rail capacity shortages and rail service failures; reduce truck wear on highways; and increase hauling efficiencies nationally.

A number of commenters expressed concern over current DM&E operations. One commenter stated that the efficiency and reliability of operations should be explained since the rail would be single-tracked for 1000 miles. One commenter stated that DM&E rural crossings are in disrepair and have not been maintained, and that there has been poor fencing and fire control.

One commenter stated that the Draft EIS did not specify how the coal reached its final destination and did not analyze impacts to small communities along the route. One commenter stated that the Draft EIS should address operational impacts and mitigation measures rather than a focus on construction impacts.

Response

SEA acknowledges the support for the proposed action. The purpose and need for the proposed project is presented in Sections 1.2 and 1.3 of the Draft EIS and in Chapter 2 of the Final EIS.

Similar

SEA agrees that the DM&E rail line requires upgrades to both the present rail conditions and for operations. Improvements to the train operations are part of the proposed action. The Board decision of December 1998 stated that the current record indicates that DM&E's signal and control system would ensure that trains meet only where there is a siding. The Applicant will make use of a computer model that allows for flexibility in the location of sidings. The Applicant has indicated to the Board that it plans for trains to move across the system in set time slots rather than being dispatched at odd intervals. The use of this slot system should keep trains moving evenly across the main track and also spread the traffic among the staging and marshalling yards across the system so that line can have ample capacity at these facilities.

The Draft EIS noted the existing condition of the rail line and the safety concerns and service reliability problems associated with continued operations (Section 1.3.1). Existing conditions detailed in the Draft EIS indicate a line in poor condition.

The modes by which the coal reaches its final destination were not analyzed as part of this EIS because there are presently no signed agreements with connecting carriers at the rail interchange points. Appendix A of the Draft EIS presents the Applicant's forecasted market shares and six core markets that are potential end-users of PRB coal. The Board has ruled that these forecasts and markets are reasonable.

Factor: F02D-Analysis - Mitigation

4

Restatement 007559 63

Mankato Mitigation

The City of Mankato requested a number of items for project mitigation, including: DM&E responsibility for the adequate drainage of the rail bed; the appointment of a DM&E community liaison to interact with the city of Mankato and property owners during construction and mitigation implementation; property acquisition; pedestrian bridges; gated crossings; access roads; overpasses; trestles; sound wall construction; home and business retrofit; fencing; landscaping; trail elevation; and floodwall mitigation at a cost of \$34.8 million.

Response

SEA received proposed mitigation from numerous jurisdictions in the project area, including Mankato, MN. The specific mitigation measures proposed by SEA are found in Chapter 12 of this Final EIS. The proposed alternative, M2, would not go through the City of Mankato thus alleviating the need for much of the mitigation called for in the comments. Chapter 7 of this Final EIS describes a comparison of impacts to the Mankato area.

Factor: F02A-Analysis - Data Accuracy

2

Restatement 000404 56

Other Construction Comments

One commenter took exception with the phrase "might not be possible" on page 2-49 related to reconstruction, requesting more precise language. Another commenter noted that the statement on page 2-24 of the Draft EIS indicated that the yard and pre-cast plant concrete plant would be set up in "early 2001." The commenter also noted that this was not feasible

Response

The phrase "might not be possible" referred to a potential inability by DM&E to run trains at desired speeds along reconstructed lines. The statement reflected the uncertainty of the operating characteristics of rail line along a right-of-way outside of the existing DM&E right-of-way. This statement accurately reflected the uncertainty of these particular operating characteristics. It is anticipated that construction would begin approximately 2 - 3 years after project approval. No specific start date has been set.

11/15/2001

Similar
0

Factor: F02D-Analysis - Mitigation
Restatement 000404 44

Dust Suppression

One commenter requested clarification on the use of water for dust suppression, specifically the contingency plan when water is not available, the location of contingency water, and the impact on construction from a lack of water. The commenter also stated that the responsible party for monitoring dust suppression should be identified. The commenter requested an analysis of impacts from unsuppressed dust blowing onto adjacent grass and causing dust pneumonia to livestock.

Response

Water for dust suppression would be obtained primarily from private wells and stock ponds under agreement with property owners. Owners would be compensated for water taken. Some water might be drawn from the Cheyenne River depending on availability and the ability of the Applicant to obtain the necessary regulatory approvals. Water trucks will be used to carry water to the right-of-ways and haul roads where it will be used to control dust. No water shortages are foreseen that would inhibit these dust suppression controls. Dust suppression should adequately keep dust from impacting local livestock. Ch. 12 of the Final EIS describes SEA's recommended mitigation. SEA recommends that third-party contractor assist SEA in the monitoring and enforcement of mitigation measures on an as-needed basis.

Factor: F02A-Analysis - Data Accuracy 0
Restatement 000404 45

Operating System

One commenter requested an analysis of impacts if the Communication Board Train Control (CBTC) operating system were not approved if it remained in testing. 404/45

Response

The CBTC operating system is currently being tested by two Class I railroads in the Pacific Northwest. If the CBTC system is not approved, or not approved in time to be deployed by the DM&E, dispatching services and train separation would be conducted under Centralized Traffic Control (CTC). The Applicant has not based the proposed operations or investment costs on the CBTC system and can operate efficiently with a standard CTC system.

Factor: F02E-Analysis - Results 0
Restatement 000404 45

Operating System

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Response

The CBTC operating system is currently being tested by two Class I railroads in the Pacific Northwest. If the CBTC system is not approved, or not approved in time to be deployed by the DM&E, dispatching services and train separation would be conducted under Centralized Traffic Control (CTC). The Applicant has not based the proposed operations or investment costs on the CBTC system and can operate efficiently with a standard CTC system.

Factor: F02D-Analysis - Mitigation

Restatement 003554 5

Funding

A number of commenters provided comments on funding sources for DM&E improvements and responsibilities for paying for improvements and mitigation. A number of commenters believed that DM&E should have to pay for bypasses, crossing improvements, and mitigation from their own revenues and not use taxpayer subsidies.

A number of commenters requested information about the cost of improvements and the bypasses. Another commentator stated that the Draft EIS should indicate that the repair and maintenance of county roads, overpasses, safety devices not in the application would come from county and state taxes.

Commenters stated that the Draft EIS failed to discuss the availability of Federal Railroad Rehabilitation and Improvement Financing Program (RRIF) funds, and questioned why no other financing options were explored. One commenter asked if DM&E could use funds from that program as well as taxpayer monies to make improvements.

One commenter stated that DM&E had realized rates of return and operating ratios equal to Class I railroads that should allow it to make upgrades as other Class I railroads have done.

Response

SEA received many comments on the funding aspects of the proposed project. The Applicant has submitted evidence and testimony from several sources that indicate that the project is attractive to investors. No commitment of funds has been made to date. DM&E is responsible for the upkeep and maintenance of the rail line. DM&E will also be responsible for those mitigation measures that the Board specifies in its' final ruling. The mitigation measures proposed by SEA are found in Chapter 12 of this Final EIS. As indicated in the Draft EIS, sales and property taxes would increase as a result of the project implementation. These monies would be available at the state or county level for area improvements.

SEA acknowledges the existence of a variety of funding mechanisms available to the Applicant. A discussion of the Federal Railroad Rehabilitation and Improvement Financing Program (RRIF) funds is found in Chapter 3 of this Final EIS.

The Board, in the December 9, 1998 Decision stated that a railroad with annual revenues in the \$50 to \$60 million range cannot generate sufficient funds to rehabilitate its lines because normal maintenance expense for over 1,000 miles of track runs into the millions of dollars per year. Absent the funds generated by this project there appears to be the very real likelihood that the DM&E would cease to exist as a viable railroad.

Factor: F02C-Analysis - Methods

Restatement 007533 5

A number of commenters provided statements regarding the I&M interchange. One commenter stated that the Draft EIS did not analyze plans and arrangements between DM&E and IMRL, agreements on signaling, coordination of operations, the number of coal trains to be interchanged with the IMRL, and where trains would stop to interchange. Many commenters stated that the Draft EIS should analyze the effects of DM&E traffic going north on the and the impacts of rural communities along the I&M route. One commenter stated that the Board should mandate protections as overpasses.

Several commenters stated that in the Draft EIS SEA did not forecast or assess the potential increase in rail traffic in Austin from the routing of train traffic onto the I&M link. One commenter noted that the poor condition of the I&M Rail Link was not conducive to safe transport of coal trains, and that increased traffic would cause congestion in the City of Austin.

Response

SEA received a number of comments about possible connections to the I&M rail link. DM&E has indicated that where feasible, all rail crossings would be grade-separated. It plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Minnesota City have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points, however, the Board had previously determined that the lack of a signed agreement was not a reason for disapproval of the transportation-related aspects of the project (Appendix A, Draft EIS).

If the project is approved, the Board will ensure the interchange of cars with connecting carriers when reasonable agreements cannot be reached. However, potential future rail traffic on the I&M line, and impacts to communities served by the IMRL, was determined to be speculative and not within the scope of the EIS. For a more thorough discussion of the I&M rail link in Owatonna, please refer to Chapter 8 of this Final EIS.

Factor: F02A-Analysis - Data Accuracy

0

Restatement 007564 5

Cumulative Impacts

One commenter stated that the Draft EIS fails to take into account reasonably expected future conditions, in conflict with 40 CFR 1508.7 (cumulative impacts) because no traffic projection assumptions are used to calculate future impacts. The commenter stated that static traffic data does not accurately assess future conditions, and misses potential mitigation.

Response

SEA knows of no objective means of analysis to measure the cumulative impacts of every crossing that takes into consideration delay, accidents, emergency response delay, potential pedestrian concerns and bicyclist concerns. The cumulative analysis is based on "engineering judgement" that takes place during the state's diagnostic review process.

It is not common traffic engineering practice to install traffic signals or highway/railroad grade crossing active warning devices based on future traffic projections. The warrants for traffic signals are outlined in The Manual on Uniform Traffic Control Devices (MUTCD)-USDOT. The traffic and safety analysis used in the Draft EIS is consistent with the approach that active warning devices are added to the roadway facility when the traffic volumes actually reach the warranted level.

Factor: F01H-Alternatives - Yards

0

Restatement 007705 5

For construction of the switching yard a township road will have to be closed, creating a hardship on the township. 7705/5

Response

SEA received comments from citizens concerned with access near switching yards and sidings. DM&E will consult with the state Department of Transportation in Minnesota as well as local road authorities in the affected counties and Utica Township to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals. To ensure the safe movement of vehicles near the rail line, DM&E will construct roadway approaches and rail line crossings for both

new and existing grade crossings according to the standards of the American Association of State Highway and Transportation Officials (AASHTO) design manual. DM&E will also follow applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: F02D-Analysis - Mitigation

Restatement 000404 43

Construction
Cuts and Fills

Many commenters provided comments on the construction activities related to the project.

General comments asked for a description of the construction impacts of cutting and filling, blasting, and impacts to adjacent landowners, such as property intrusion, compensation, economic consequences, and mineral rights. One commenter expressed concern that the long dirt embankments required for elevated structures would be environmentally damaging. One commenter requested the cut and fill numbers for the Cheyenne River crossing. Another commenter noted that construction of Alternative C might require bank stabilization channelization authorizations from the Corps of Engineers on the Cheyenne River in order to protect the rail bed.

One commenter stated that all demolition debris must be removed in accordance with local, state, and federal requirements.

Response

SEA acknowledges the concerns about potential impacts from cut and fill activities. The proposed Alternative C, as indicated in the Draft EIS, would cross 14 perennial streams and 520 intermittent streams, including 3 crossings over the Cheyenne River in South Dakota. In Wyoming, Alternative C would be within 500 feet of the Cheyenne River and its perennial tributaries. Changes to the local topography could occur as a result of cut and fill activities during construction.

As detailed in Chapter 12 - Mitigation of this Final EIS, DM&E will obtain all Federal permits, including the necessary Clean Water Act, Section 404 permits required by the U.S. Army Corps of Engineers, for project-related alteration of wetlands, ponds, lakes, streams, or rivers. This includes obtaining a National Pollutant Discharge Elimination System (NPDES) permit from each state (including South Dakota) affected by project-related construction or reconstruction activities.

To minimize sedimentation into streams and waterways, SEA is requiring that DM&E use best management practices, such as silt screens and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during project-related construction and reconstruction activities.

SEA is also requiring that DM&E conduct project-related construction activities in stream beds, such as culvert and bridge work, during low flow or periods when the stream is dry, where practicable. Any project-related construction activities near streams will require the construction of temporary stream crossings as close to a right angle with the stream as possible, and the design of temporary bridges to span across the ordinary high water elevations of waterways to the extent practical. Final design of cut and fill activities near the Cheyenne River, where there is a wider than average right-of-way, will be used to minimize impacts to surface waters.

Factor: F02A-Analysis - Data Accuracy

Restatement 007554 36

Train Count Assumptions

Many comments on the transportation analysis dealt with delays at intersections. One commenter noted that the Draft EIS Vol II-B, Appendix H, shows that most rail traffic moves during daylight hours and is not evenly spaced throughout the day. The commenter believes that impacts are diminished by averaging over 24 hours, and that the delay calculations for the No Action through Rochester are based on 12 trains per day, although there are only 3 trains per day. The resulting delay is actually four times greater than defined, and should be re-analyzed.

Response

SEA conducted the traffic analysis presented in the Draft EIS using FRA's grade crossing database as the primary source of data. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

The criteria and standards used in the analysis were consistent with those previously developed by the Board for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

Factor: F02C-Analysis - Methods

1

Restatement 007554 36

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Factor: F02E-Analysis - Results

10

Restatement 001094 4

Steele County

Several commenters stated that the DEIS failed to address the effects of increased traffic on the I&M Interchange track in Steele County, and for communities such as Medford, Clinton Falls, Pratt, Bixby, and Blooming Prairie.

One commenter stated that sidings in Steele County should be sited to minimize grade crossings, and that mainline and sidings should be signaled to permit waiting trains to be stopped clear of all grade crossings.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

SEA has responded to concerns for sidings construction by including mitigation measures to minimize impact. Prior to construction, the Applicant will consult with the Minnesota Department of Transportation and local road authorities to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. In Appendix I of this Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known.

Factor: F02D-Analysis - Mitigation

Restatement 001094 4

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Factor: F02D-Analysis - Mitigation

0

Restatement 004577 3

One commenter is concerned about the control of Vegetation and Noxious Weeds near the rail line.

Response

SEA recognizes the concerns expressed for the control of weeds near the proposed rail line and in the project area. SEA has proposed specific mitigation measures, as outlined in Chapter 12 of this Final EIS. Specifically, in negotiations with farmers and ranchers, SEA recommends that DM&E shall be guided by the Land Use Mitigation Policy and Plan negotiated between the Applicant with the Landowner Advisory Board, which addresses the following areas of concern:

- Direct and indirect land loss.
- Displacement of capital improvements (wells, windmills, corrals, outbuildings, irrigation systems, etc.).
- Noxious weed control.
- Fencing.
- Livestock casualty.
- Fire prevention and suppression
- Fire casualty.
- Construction-related impacts.

In addition, prior to initiating project-related construction activities, SEA recommends that DM&E consult with the Natural Resource Conservation Service, local grazing associations, and interested landowners, to develop an adequate plan for controlling noxious weeds. The plan should include an approved list of herbicides. SEA recommends that Applicant shall certify to the Board compliance with this condition in quarterly reports.

Factor: F01H-Alternatives - Yards

0

Restatement 005339 3

Utica
One commentor suggested the area west of Utica as a possible location for the proposed staging yard between Utica and Lewiston.

Response

SEA acknowledges the concerns associated with the placement of staging and marshaling yards. As Chapter 4 of the Final EIS describes how staging yard locations must meet multiple functions with minimal environmental harm. SEA's recommendation for the siting of the East Staging Yard, including environmental impacts, are also found in Chapter 4 of this Final EIS.

Factor: F02E-Analysis - Results

Restatement 007432 3

A number of commenters provided comments related to the proposed M-2 Alternative. One commenter stated that trestles and other structures had not been identified for Blue Earth County, and that the EIS did not include an evaluation of engineering reasonableness of the Southern Route. One commenter opposed the closing of any county roads that provided access for farmers or rural residents. The State of Minnesota commented that the Mankato bypass alternative with 19 new at-grade crossings was not acceptable and that the Board should identify an appropriate mix of road closures, safety measures, and grade separations.

One commenter requested assurances that train operations would not fail, leaving the City with unusable train infrastructure.

Response

SEA provides detailed mitigation measures in Chapter 12 of this Final EIS. If Alternative M-2 is built, the Applicant shall explore with Blue Earth County the feasibility and cost effectiveness of constructing new rail on a trestle or bridge rather on fill within the Blue Earth River Valley.

The Applicant shall coordinate with the Federal Railroad Administration, the state Department of Transportation in Minnesota, and local road authorities to develop a plan for the identification and eventual closure of limited-use public crossings, particularly those at or below 100 ADT, where appropriate alternative public crossings are available.

A financial fitness submittal prepared by the Applicant was reviewed by the Board. The financial fitness test is not to protect the carrier or its investors but to protect existing shippers from a carrier's proposed action. The Applicant developed five different financial scenarios based on three tonnage and three netback assumptions. The financial scenarios were reviewed by the Board and a finding of no harm to existing shippers and receivers was met by the Applicant. The findings are found in Appendix A of the Draft EIS.

Factor: F02D-Analysis - Mitigation

2

Restatement 007557 31

Winona
One commenter stated that there are 7 crossings in Winona that meet the 300,000 indicator (number of trains per day multiplied by the number of vehicles per da at a crossing)for being a grade separation candidate. The Board should order the DME to pay full costs for construction of two grade separations in Winona.

Response

SEA reviewed the comments regarding grade separations in Winona, Minnesota. SEA completed a thorough evaluation of the potential impacts to the grade crossings in the community and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's proposed transportation mitigation.

Factor: F02E-Analysis - Results

0

Restatement 000404 32

One commenter was concerned that sufficient rail service already existed from the PRB mines and that DM&E was not needed.

Response

SEA indicated in Chapter 1, Purpose and Need, of the Draft EIS that the proposed DM&E project would have the advantage of being a straighter, shorter, and more direct rail line between teh PRB mines and DM&E's target utility market area than the current rail carriers. These savings would result in lower transportation and utility costs.

Factor: F01G-Alternatives - Rochester Bypass 2

Restatement 007557 28

One commenter stated that the significant train increase warrants the Board ordering DM&E to pay for all costs associated with the construction of grade separations in Rochester. The Rochester Bypass alternative with 34 at-grade crossings must identify road closures, safety improvements, and grade separations.

Response

The Board has developed a level of grade crossing protection by the Applicant, who will be responsible for 90% of the cost of the protection on the existing rail line through Rochester.

In response to the comment about the Rochester Bypass Alternative, SEA has determined that the existing line through Rochester (R-2), with appropriate mitigation, is the environmentally preferred alternative.

Factor: F02D-Analysis - Mitigation 2

Restatement 007557 28

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Factor: F02E-Analysis - Results 0

Restatement 006454 25

Wall

One commentor stated that the alignment of the proposed route near Wall, SD would interfere with the proposed runway expansion at the Wall airport.

Response

SEA has considered the proposed improvements to the Wall airport. These findings are discussed in Chapter 4 of this Final EIS. No adverse impacts from the project are expected on the Wall airport.

11/15/2001

Similar

Factor: F02E-Analysis - Results

3

Restatement 008099 26

Borrow Pits

One commenter stated that the borrow pits should be identified and related impacts assessed. Additionally, the commenter requested that the EIS provide information about the rights under eminent domain laws for landowners who do not provide borrow pits, the environmental impacts of the borrowing, and the proposed mitigation for borrow pits.

Response

It is SEA's understanding that the amount of borrow material needed for construction will be based on final engineering plans, known available borrow sources, and the extent to which cut material can be used. SEA will require that DM&E not encroach on private property to obtain borrow material. DM&E would prefer to acquire borrow pit material through negotiations with land owners and not through eminent domain. Borrow areas on USFWS lands will be used only after a determination of need has been established and the applicable permits obtained. SEA's mitigation plan has recommended that all areas disturbed by construction or reconstruction activities be restored as close to their original condition as practical. In addition, a Community Liaison will be established to consult with affected land owners, communities and agencies.

Factor: F03B-Process - NEPA Compliance

3

Restatement 008099 26

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Factor: F02D-Analysis - Mitigation

3

Restatement 008099 26

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Factor: F02D-Analysis - Mitigation

2

Restatement 007559 20

The City of Mankato expressed concern that the Draft EIS made no recommendations for grade separations or grade crossing closures. The City of Mankato requested that DM&E improve or mitigate traffic impacts relative to the project, through operational planning, track design, grade separations, and other available technologies.

One commenter stated that train traffic increases will exacerbate traffic and circulation issues on Mankato where grade separations are needed. These increases warrant the Board to order the DM&E to pay for all costs associated with construction of grade separations.

Response

SEA reviewed the comments regarding grade separations in Mankato and determined that grade separations are not warranted for Mankato. The M-3 Alternative assumed the construction of a new rail within the existing Union Pacific (UP) rail corridor. The existing trackage rights agreement between DM&E and UP does not preclude a future alternative of shared trackage rights, however, this was not determined to be a viable alternative under the existing agreement. Renegotiated trackage rights between DM&E and UP, and a decision to utilize those rights for the proposed project, would necessitate an examination of environmental impacts by the Board.

In Chapter 12 of this Final EIS SEA provides mitigation measures for the M-3 Alternative, should this alternative become a viable route. If built, the Applicant shall install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains for the pedestrian crossings of the Sakatah Singing Hills State Trail, Blue Earth County. The Applicant shall certify to the Board that they have complied with this condition as part of its quarterly reports required at Condition 124 prior to operation of unit coal trains along Alternative M-3.

Additionally, for M-3, the existing rail corridor alternative through Mankato, if the Applicant determines that it must rebuild the existing bridge over the Blue Earth River to permit operation of unit coal trains, the Applicant shall consider incorporating a pedestrian/bicycle crossing as part of the new rail bridge design.

Factor: F02E-Analysis - Results

4

Restatement 007670 20

Two commenters stated that although the Draft EIS stated that derailments were unlikely, they do occur and should be analyzed.

Another commenter stated that DM&E was responsible for health and safety issues whether or not the project is approved. One commenter noted that many safety measures would not be installed until tonnage reached a predetermined level, but accidents would be more frequent in the early stages of the expanded service.

Response

SEA did not analyze derailments as part of this EIS. As indicated in Chapter 1, the proposed project would replace rail ties, upgrade track steel, and implement train signaling systems, with the intention of reducing accidents, including derailments.

SEA recognizes citizens' interest in safety improvements and that proposed mitigation measures include timing for implementation. The timing for mitigation is presented in Chapter 12 of this Final EIS. Timing stipulations include construction schedules and increases in train traffic.

Factor: F02F-Analysis - Thresholds/Significance Criteria

14

Restatement 007546 233

STUDY METHODOLOGY

A variety of comments focused on the transportation study presented in the Draft EIS. One commenter stated that the project was found to not have any (or little) harm to the transportation systems due to the Board's criteria for measuring harm and impacts.

One commenter stated that the analysis of traffic delays is flawed because the average daily traffic volumes were averaged over a 24-hour period. It is believed that peak periods will cause significant delays. Of special concern were the cities of Rochester and Winona. One commenter stated that the Draft EIS calculations were incorrectly based on ADTs averaged over a 24 hour period, but should have been averaged over normal "business" hours of 6 am to 7 pm. One commenter stated that the traffic count information was dated and unreliable.

One commenter stated that a methodology driven by train speed will always result in no impact unless there is a dramatic increase in train traffic. The analysis is not a system analysis but an analysis of impacts to individual motorists at individual crossings. The commenter states that the analysis should have assessed crossing level impacts, corridor level impacts and system level impacts, and the analysis misses the 700% increase in the number of motorists who would be stopped by a train on a daily basis, the \$1.1 in indirect costs due to traffic delay, and the 140% increase in accidents. Significant indirect costs not addressed include delays, societal costs of accidents, and cost of increased air pollution.

Response

SEA has conducted the traffic delay analysis in accordance with previously established methods of analysis. The primary source of the data used in the traffic analysis was from the FRA's grade crossing database. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

The criteria and standards used in the analysis were consistent with those previously developed by the Board's for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

Appendix G.2.5 of the Draft EIS presents a formula for calculating the vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available.

The criteria and standards used in the analysis were consistent with those previously developed by the Board's for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

The lack of national standards and guidelines to address vehicular delay at highway/railroad crossings have required the Board's to develop indicators that can help screen where obvious traffic congestion problems may occur. These same methodologies were applied to this project. The number of daytime trains is defined simply as the "average number of thru trains per day during daylight" in the Railroad-Highway Grade Crossing Handbook-USDOT. For this analysis the daylight hours of 7 AM to 10 PM, or 15 hours, were chosen so as to be consistent with the hours used for the noise analysis. Furthermore, the use of the extended daylight hours resulted in a more conservative analysis for accident prediction.

Factor: F02A-Analysis - Data Accuracy 0

Restatement 007546 234

Accidents

One commenter stated that the predicted accidents were understated because traffic data was 6 to 12 years old from the MNDOT and the FRA and came, in part, from the 1994 MNDOT State Aid Count Maps. The commenter believed that the study should have used the Southern MN Rail Corridor Safety Plan that identified traffic counts at every highway-rail intersection through 1998. Also, Rochester-Olmsted Council of Government count estimates provided during scoping appear to have only been used when no other data was available, using older data in favor of these numbers.

Response

SEA used the FRA's grade crossing database as the primary source of data used in the traffic analysis. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

Factor: F02C-Analysis - Methods 6

Restatement 007557 19

Many commenters from the Rochester area expressed concern for rail plans, construction, operations and mitigation of impacts. One commenter noted that Rochester faced a higher risk for problems because the City had expanded around the railroad. A number of commenters noted that the Draft EIS reported a number of existing trains through Rochester greater than three per day. One commenter noted that the impact from the Rochester-requested high-speed rail line service to Chicago and the Twin Cities would be no worse than the proposed project.

Response

Chapter 9 of the Final EIS describes in detail the impacts associated with the proposed alternatives in Rochester and SEA's recommendations. Chapter 12 details the mitigation planned for the City of Rochester. As Chapter 12 of the Final EIS describes, the Applicant shall install two grade-separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. The Applicant shall complete installation of one grade-separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. Applicant shall complete installation of a second grade-separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year.

Factor: F01H-Alternatives - Yards
Restatement 000512 2

One commenter is concerned that the proposed staging area will cause a hardship because of the closure of one access road south on Shag Road. This will result in only one ingress/egress point on Shag Road, serving a population of over 100.

Response

SEA received comments from citizens concerned with access in the Shag Road area. The Applicant will consult with the state Departments of Transportation, in Minnesota, South Dakota, and Wyoming, and local road authorities in the affected counties or townships to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals. To ensure the safe movement of vehicles near the rail line, DM&E will construct roadway approaches and rail line crossings for both new and existing grade crossings according to the standards of the American Association of State Highway and Transportation Officials (AASHTO) design manual. DM&E will also follow applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: F02D-Analysis - Mitigation 6

Restatement 001094 2

Winona
 One commenter stated that Goodview and Winona should be considered in the DEIS for increased traffic impacts related to the project. The City of Winona requested an east (Louisa Street) and west end (Pelzer Street) overpass along with a crossing in the central city with DM&E paying all costs related to the three proposed grade separations.

Response

SEA reviewed the comments regarding grade separations in Goodview and Winona. SEA determined that grade separations are not warranted for these communities. SEA completed a thorough evaluation of the potential impacts to Louisa Street and Pelzer Street and determined that the crossing would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's proposed transportation mitigation measures.

Factor: F01H-Alternatives - Yards 6

Restatement 004576 2

Eagle Lake
 A number of commenters opposed the proposed East Staging and Marshalling Yard location under Alternative D. Other commentors requested clarification of the proposed impacts of the yard in this location. One commenter asked how long it would take an eastbound train to build up speed after leaving the yard. Still other commenters asked about the delays at intersections, the average delay time, and if county Roads 56, Third Street, Second Street, Agency Street, County Road 17, or access to Highway 14 would be impacted.

Response

The preferred alternative, Alternative C, as described in Chapter 3 would not include the East Staging and Marshalling Yard as described for Alternative D. The recommended site for the East Staging Yard, and a discussion of potential environmental impacts, are found in Chapter 4 of this Final EIS.

11/15/2001

Similar
0

Factor: F01G-Alternatives - Rochester Bypass

Restatement 006450 2

Pleasant Grove

The Pleasant Grove Township commented in opposition to the Rochester Bypass because it would run parallel to I-90 causing road closings and landlocked parcels and access problems.

Response

The proposed Rochester Bypass options, Alternatives R-3 and R-4, are not included as part of the Final EIS's preferred alternative. Please refer to the discussion in Chapter 9 of the Final EIS for an analysis of the alternatives considered for the Rochester area.

Factor: F02D-Analysis - Mitigation

3

Restatement 006451 2

Winona

One commenter stated that Goodview and Winona should be considered in the Draft EIS for increased traffic impacts related to the project. The City of Winona requested an east (Louisa Street) and west end (Pelzer Street) overpass along with a crossing in the central city with DM&E paying all costs related to the three proposed grade separations.

Response

SEA reviewed the comments regarding grade separations in Goodview and Winona. SEA determined that grade separations are not warranted for these communities. SEA completed a thorough evaluation of the potential impacts to Louisa Street and Pelzer Street and determined that the crossing would not meet SEA's criteria for grade separations. Though SEA completed an evaluation of the potential operational impacts in Winona, the rail line that runs through the City is owned and operated by CN. The Board cannot impose mitigation on rail lines owned by other railroad companies.

Factor: F02A-Analysis - Data Accuracy

19

Restatement 007564 2

A number of commenters remarked on the proposed Rochester Bypass. Some commenters expressed a general concern for the environmental impacts of the Bypass. One commenter believed that the cost of a bypass had been underestimated and that it would cost over \$200 million. A commenter stated that the Bypass would deprive customers access to local farm businesses. One commenter stated that the Bypass should have grade separations at Highway 14, west of Byron and Highway 63, north of Stewartville. One commenter suggested that the Bypass be linked to future high-speed rail connections between the Twin Cities and Chicago and between the Twin Cities and Rochester airports. One commenter stated that the DM&E route should parallel I-90 to the extent possible.

One commenter stated that the Draft EIS summarized construction-related transportation for R-2 and R-4 differently, noting the installation of grade crossings for R-4 but ignoring the number of grade crossings that have to be re-installed for R-2. The commenter stated that bus routes on R-2 were not analyzed, noting 373 school buses per day that cross R-2 compared to 3 to 5 crossings per day for R-4.

The Final EIS should also reflect transportation mitigation impacts of the grade separations proposed for R-4, including Highways 14 in Byron, Highway 63 at the airport, and Highway 52.

Response

The Rochester Bypass was determined to have environmental and geological constraints that precluded the siting of a viable route. The preferred alternative is the existing rail corridor through Rochester. For a more detailed analysis of the alternatives around and through Rochester, MN, please refer to Chapter 9 of this Final EIS.

After thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area, SEA determined that the existing route through Rochester (R-2), with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. For a detailed analysis of the alternatives in the Rochester area, please refer to Chapter 9 of this Final EIS.

As Chapter 12 of the Final EIS describes, the Applicant shall install two grade-separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. The Applicant shall complete installation of one grade-separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. The Applicant shall complete installation of a second grade-separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year.

Additional impact analysis of the project on bus routes can be found in Chapter 9 of this Final EIS.

Factor: F02D-Analysis - Mitigation

Restatement 007553 17

Project Impacts at the Port of Winona

A number of commentors stated that the EIS should analyze new construction of the DM&E rail into the Commercial Harbor, and identify environmental impacts, impacts to the National Wildlife and Fish Refuge, infrastructure impacts, and mitigation. The analysis should also examine the risk associated with spills of cargo as a result of increased rail transport along the Upper Mississippi River. A commenter stated that the Applicant should pay for all new construction and mitigation.

One commenter noted that the U.S. Army Corp of Engineers is involved in an Upper Mississippi River and Illinois Rivers System Navigation Study to assess environmental impacts and economic benefits of upgrades to transportation infrastructure. The Draft EIS should reference this study, although the proposed project is not a part of the study.

Response

The modes by which coal would reach a final destination were not analyzed as part of this EIS. There are presently no signed agreements with connecting carriers at the rail interchange points. Appendix A of the Draft EIS presents the Applicant's forecasted market shares and six core markets that are potential end-users of PRB coal.

DM&E does not currently intend, and would have no ability, to off-load coal unit trains to barges at Winona, Minnesota. Currently there are no facilities that exist in the vicinity of Winona that have the capability to off-load coal onto barges. DM&E does not provide direct service to any barge facilities. DM&E services Winona Harbor docks only through trackage rights and interchanges provided by other railroads. Projections about any future use of barges to off-load coal were determined to be speculative in nature and out-of-scope for this project. Should a barge facility be developed it would likely require an environmental review under NEPA.

11/15/2001

Similar

SEA is aware of the U.S. Army Corp of Engineers' Upper Mississippi River and Illinois Rivers System Navigation Study. SEA provided a copy of the Draft EIS for use by the Corps in their study.

Factor: F02D-Analysis - Mitigation

3

Restatement 007557 17

Mitigation

General

One commenter believed that the addition of 34 trains per day would cause significant delays at a number of grade crossings in Minnesota, and that mitigation in the form of grade separations and Intelligent Transportation Systems (ITS) should be utilized.

Another commenter stated that DM&E should be required by the Board to fully honor the system structure as stated in the construction application to adequately interchange with other railroads. One commenter stated that it is imperative that DM&E repay outstanding debt to the Minnesota DOT as part of debt restructuring, and to maintain the economic viability of the railroad in Minnesota.

Response

SEA has proposed mitigation measures in response to the concerns about significant transportation delays and transportation safety. SEA is recommending that DM&E consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. This consultation will also be used to discuss the possible installation by the Applicant of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. These systems show the location of trains and/or the position of grade crossing warning signals.

Chapter 12 of this Final EIS describes SEA's recommended mitigation to address potential significant environmental impacts of the proposed project.

The Applicant has indicated that where feasible, all rail crossings would be separated. It plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Minnesota City have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points.

Factor: F02B-Analysis - Existing Conditions

6

Restatement 007546 14

A number of commenters took exception with the existing train traffic levels presented in the Draft EIS. The Draft EIS stated there were 12 trains per day, when in fact the number was closer to three. Commenters believed that this skewed the accident analysis and delay calculations. One commenter noted that the Draft EIS used only existing traffic data, and not projected volumes for the crossings analysis. This resulted in different recommendations by the State at 31 crossings. The same commenter stated that the EIS should acknowledge that the projected 37 trains will not all go east through Rochester and Winona, but interchange at Mankato and Owatonna.

Response

The primary source of the data used in the analysis was from the FRA's grade crossing database. This data was improved by using updated traffic counts and other physical characteristics supplied to us by the Minnesota Department of Transportation (document dated 1/12/99).

Appendix G.2.5 of the Draft EIS presents the formula that was used for calculating vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available.

Factor: F01M-Alternatives - Other

33

Restatement 007559 12

Commenters expressed concern over a renegotiated trackage rights agreement between UP and DM&E that might avoid the jurisdiction of the Board and NEPA. The same commenter stated that the EIS should discuss an action alternative of a renegotiated trackage rights agreement for UP track upgrades or the construction of a second parallel track in the UP right-of-way.

The City of Mankato provided a mitigation plan for Board consideration under the M-3 alternative. The City requested that the Board ensure shipper access to the DM&E line. Prior to mitigation plan finalization, the City requested that DM&E discuss with them the shippers need for access.

The City of Mankato requested that DM&E define needed right-of-way, properly construct and maintain tracks and rail beds, and maintain locomotives and cars lines to minimize noise and vibration, and maintain the right-of-way per the City Code.

One commenter advocated continued access through Mankato to provide a competitive alternative for the major grain processors in Mankato.

Response

The M-3 Alternative assumed the construction of a new rail within the existing Union Pacific (UP) rail corridor. The existing trackage rights agreement between DM&E and UP does not preclude a future alternative of shared trackage rights, however, this was not determined to be a viable alternative under the existing agreement. Renegotiated trackage rights between DM&E and UP, and a decision to utilize those rights for the proposed project would necessitate an examination of environmental impacts by the Board.

Should this alternative (M-3) become viable, the Applicant would define the needed right-of-way, properly construct and maintain tracks and rail beds, and maintain locomotives and cars lines to minimize noise and vibration, and maintain the right-of-way per the City Code. Mitigation to be considered under this alternative would include shipper access to the DM&E line, in consultation with the City.

The implementation of the M-2 alternative will neither undo the trackage rights agreement between UP and DM&E nor result in a cessation of service by DM&E along the existing corridor.

Factor: F02A-Analysis - Data Accuracy

10

Restatement 000404 10

South Dakota

Proposed sidings in South Dakota drew a number of comments. One commenter requested that the EIS identify all the sidings and property requirements and the eminent domain laws relative to sidings. The commenter noted that siding #52 in Volume I, Table 2-6 was listed as 15.3 miles long. The same commenter noted that the milepost markers for Alternative D (Volume I, Table 2-8) jumped from 36.0 to 675.84 between sidings 49 and 50. The commenter stated that the location of sidings, especially the Oral Segment, from description on page 2-77, Table 2-7 for Alternative C, was unclear, and that the "no *" was not explained.

Response

SEA recognizes that sidings are an integral part of the proposed project. Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. In Appendix I of this Final EIS, SEA includes a summarized chart of milepost locations and proposed sidings under each Extension Alternative. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known. No eminent domain activities are anticipated. Of the Hay Canyon Alternatives, the WG Divide Alternative is identified as the preferred alternative. The Oral Segment and the Hay Canyon Segment are not part of the Final EIS. The asterisk (*) in Table 2-7 referred to the sidings on the Phiney Flats/WG divide Alternative

Factor: F01G-Alternatives - Rochester Bypass 6

Restatement 008611 10

The proposed bypass will limit any expansion to the Rochester Airport. 8611/10

Response

SEA is recommending in this Final EIS that the Rochester Bypass be eliminated as an alternative to the proposed project. A detailed analysis of the Rochester Bypass considerations can be found in Chapter 9 of this Final EIS.

Factor: F02D-Analysis - Mitigation 0

Restatement 008168 1

Wyoming

One commenter suggested the location of grade separations in Wyoming at US Highway 85 south of Newcastle and Wyoming Highway 450 near the mines.

Response

SEA reviewed the comments regarding grade separations in Wyoming. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts to Wyoming and determined that the crossings would not meet SEA's criteria for grade separations.

Factor: F02D-Analysis - Mitigation 14

Restatement 001514 1

Brookings Bypass

A number of commenters provided statements on the proposed Brookings Bypass. The City of Brookings commented that the Board should impose mitigation on DM&E in the form of a shortened bypass that would have less impact than the proposed 14.5-mile bypass. One commenter stated that the Brookings Bypass would cost more than the cost presented in the Draft EIS, especially since the tracks through the city would require upgrade. Another commenter stated that there was no alternative to the Brookings Bypass, especially if the citizens were required to pay for it. One commenter stated that the topographic inputs of the bypass alternatives were understated as shown in the Brookings area. The City of Brookings requested that the Board make a contingency order to provide mitigation without the \$4 million City contribution for upgrades.

Response

SEA evaluated the potential environmental impacts of the alternative routes through the Brookings area and determined that Alternative C is the environmentally preferred alternative.

Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

A detailed description of the Brookings alternatives is found in Chapter 6 of the Final EIS. Specific impacts from the Brookings Bypass alternative are described on a resource-by-resource basis.

Factor: F03D-Process - STB policy, process

14

Restatement 001514 1

Brookings Bypass

A number of commenters provided statements on the proposed Brookings Bypass. The City of Brookings commented that the Board should impose mitigation on DM&E in the form of a shortened bypass that would have less impact than the proposed 14.5-mile bypass. One commenter stated that the Brookings Bypass would cost more than the cost presented in the Draft EIS, especially since the tracks through the city would require upgrade. Another commenter stated that there was no alternative to the Brookings Bypass, especially if the citizens were required to pay for it. One commenter stated that the topographic inputs of the bypass alternatives were understated as shown in the Brookings area. The City of Brookings requested that the Board make a contingency order to provide mitigation without the \$4 million City contribution for upgrades.

Response

SEA evaluated the potential environmental impacts of the alternative routes through the Brookings area and determined that Alternative C is the environmentally preferred alternative.

Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

A detailed description of the Brookings alternatives is found in Chapter 6 of the Final EIS. Specific impacts from the Brookings Bypass alternative are described on a resource-by-resource basis.

Factor: F02E-Analysis - Results

0

Restatement 003663 1

There are local concerns that increased rail traffic will be detrimental to Medford.

Response

Medford is located on IMRL and UP rail lines, north of Owatonna. SEA did not evaluate potential noise impacts from DM&E interchanging trains with other rail carriers on tracks owned by other rail carriers. DM&E does not currently have coal contracts therefore the routing and the number of trains on those routes would be speculative. A full

evaluation of the potential noise impacts of the alternative routes through Owatonna may be found in Chapter 8 of the Final EIS.

Factor: F02A-Analysis - Data Accuracy

6

Restatement 000059 1

Rochester Sidings

The City of Rochester requested maps and drawings of the five sidings proposed entirely or partially within Olmsted County. The City asked if the sidings would be used as passing sidings or for marshalling yard purposes, and if they would be constructed in the initial phase to accommodate 40 million tons of coal.

One commentor requested that DM&E not construct sidings within 1260 feet of any residential area, or near grade crossings with an average daily traffic of over 1,000. One commentor asserted that the FEIS must fully examine the environmental impacts of DM&E's siding construction and operations, DM&E's intention to add a "second main track", and the possibility of operating more than the 37 trains indicated in the DEIS.

Response

SEA recognizes the concern for the placement of sidings and the potential impacts associated with these rail segments. Prior to construction, the Applicant will consult with the Minnesota Department of Transportation and local road authorities in the Olmsted County to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known. In Appendix I of this Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.

Environmental impacts were assessed for sidings within the proposed right-of-way for the project. Potential environmental impacts in Minnesota are described in Chapter 3 of the Draft EIS.

Factor: 0

Restatement 000376 4

One commenter was concerned about the potential impact of construction vehicles using lightly traveled county roads. The commenter believes that the Applicant should reimburse the county (Weston County, specifically) for increased maintenance of county roads.

Response

SEA recognizes the potential for construction traffic to have a negative impact on rural roads and highways. Chapter 12 of this Final EIS describes SEA's recommended mitigation. SEA recommends that to the extent possible, the Applicant will confine all project-related construction traffic to a temporary access road within the right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or established public roads, the Applicant shall make necessary arrangements with landowners to gain access from private roadways. The temporary access roads shall be used only during project-related construction.

SEA also recommends that the Applicant shall also consult with the state Departments of Transportation, in Minnesota, South Dakota, and Wyoming, and local road authorities in the affected counties or townships to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Factor:

Restatement 003554 5

Funding

A number of commenters provided comments on funding sources for DM&E improvements and responsibilities for paying for improvements and mitigation. A number of commenters believed that DM&E should have to pay for bypasses, crossing improvements, and mitigation from their own revenues and not use taxpayer subsidies.

A number of commenters requested information about the cost of improvements and the bypasses.

32/3. Another commentor stated that the Draft EIS should indicate that the repair and maintenance of county roads, overpasses, safety devices not in the application would come from county and state taxes.

Commenters stated that the Draft EIS failed to discuss the availability of Federal Railroad Rehabilitation and Improvement Financing Program (RRIF) funds, and questioned why no other financing options were explored. One commenter asked if DM&E could use funds from that program as well as taxpayer monies to make improvements.

One commenter stated that DM&E had realized rates of return and operating ratios equal to Class I railroads that should allow it to make upgrades as other Class I railroads have done.

Response

SEA received many comments on the funding aspects of the proposed project. The Applicant has submitted evidence and testimony from several sources that indicate that the project is attractive to investors. No commitment of funds has been made to date. DM&E is responsible for the upkeep and maintenance of the rail line. DM&E will also be responsible for those mitigation measures that the Board specifies in its' final ruling. The mitigation measures proposed by SEA are found in Chapter 12 of this Final EIS. As indicated in the Draft EIS, sales and property taxes would increase as a result of the project implementation. These monies would be available at the state or county level for area improvements.

SEA acknowledges the existence of a variety of funding mechanisms available to the Applicant. A discussion of the Federal Railroad Rehabilitation and Improvement Financing Program (RRIF) funds is found in Chapter 3 of this Final EIS.

The Board, in the December 9, 1998 Decision stated that a railroad with annual revenues in the \$50 to \$60 million range cannot generate sufficient funds to rehabilitate its lines because normal maintenance expense for over 1,000 miles of track runs into the millions of dollars per year. Absent the funds generated by this project there appears to be the very real likelihood that the DM&E would cease to exist as a viable railroad.

Factor: 0

Restatement 007546 60

Rail Stability

One commenter stated that ten of the eleven accidents in Olmsted that were reported to the FRA occurred in the Decorah-Edge hydrogeologic setting and that the Draft EIS possibly underestimated the probability of future derailments in groundwater recharge areas. The commenter stated that the engineering methods for reducing structural instability in areas of shales and siltstones, or wetlands, be described, along with mitigation measures that protect the groundwater and Wellhead Protection Areas.

Response

In response to these comments, SEA conducted additional analysis of soil and geologic conditions in Olmsted County. Chapter 9 of this Final EIS describes in greater detail the problems associated with the project construction and operations relative to well fields and karst topography.

Factor: F02A-Analysis - Data Accuracy 4

Restatement 000003 1

EMERGENCY ACCESS

Numerous commenters commented on their concern that the proposed project could delay needed medical care -- either access by emergency response vehicles to homes or vehicular access to medical treatment facilities in locales such as Rochester.

Response

SEA is aware of the many concerns expressed for emergency care access across rail lines. As described in Chapter 12 of the Final EIS, which describes SEA's final recommended mitigation, SEA recommends that the Applicant consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. This will include the discussion of the possible installation by the Applicant of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. Such a display board would show the location of trains and/or the position of grade crossing warning signals.

Factor: 0

Restatement 006454 15

Pierre

Commenters in Pierre noted that the city has several of the busiest railroad intersections in South Dakota and that the railroad could create a harsh business environment. One commenter stated that the Draft EIS does not adequately address the issue of blocked intersections, train speeds and the blockage time. The commenter believed that the train speeds will be much lower than estimated in the Draft EIS.

Two commenters expressed concern for derailments in Pierre, at the Missouri River.

One commenter stated that the existing DM&E bridge through Pierre would not support the coal traffic and that a new bridge next to the old one would pose significant environmental issues. The commenter stated that bypass costs would be reduced if DM&E requirements were relaxed.

Response

SEA has conducted additional analysis of impacts associated with the proposed project in Pierre. This discussion is located in Chapter 5 of the Final EIS.

As part of the mitigation recommended in Chapter 12 the Final EIS, SEA recommends that the Applicant shall install a grade separated crossing in Pierre, South Dakota, at Sioux Avenue or other mutually acceptable location, to be completed within one year of commencement of unit coal train operations through Pierre. The Applicant shall consult with the appropriate state and local transportation authorities, City of Pierre, and Federal Railroad Administration on the design, location, and funding of this separation.

Factor:

Restatement 000195 2

Rochester Bypass

A number of commenters expressed concerns about roadways potentially impacted by the proposed Rochester Bypass. The Byron School District stated that the Rochester Bypass would cause delays and safety issues as the district's four buses and four vans might have to cross the DM&E tracks as many as 64 times per day. One commenter stated that the Draft EIS did not analyze the crossings of the Rochester Bypass on TH 52, TH 63, and TH 14. One commenter stated that between 5 to 11 % of local Rochester bus service would be delayed if R-2 is approved resulting in loss of service dependability, missed transfers, and inconvenience on 8 weekday routes and 225 daily bus trips.

A number of commenters stated that private field crossings of the bypass might not be available, and noted safety hazards associated with slow-moving farm vehicles. One commenter believed that the lengthy detours plus the increased fuel use and missions and equipment depreciation, should be analyzed in the Draft EIS. One commenter expressed a general concern about mail service delays.

Response

SEA has responded to the concerns raised over a possible Rochester bypass in Chapter 9 of this Final EIS. This chapter includes an analysis of alternatives and a discussion of factors considered in deciding not to recommend the Rochester Bypass. The proposed Rochester Bypass options, Alternatives R-3 and R-4, are not included as part of the Final EIS's preferred alternative.

SEA believes that the transportation access concerns associated with the Rochester Bypass will not be realized under the preferred alternative. SEA's recommended mitigation measures are described in Chapter 12 of this Final EIS. SEA recommends that the Applicant will provide access for the safe movement of farm equipment to fields and pastures as a result of road closures following construction and during operation of the Applicant's rail yards. The Applicant shall provide or develop appropriate alternative access to these fields and pastures. Alternatives for access could include development of frontage roads adjacent to yard boundaries, agreements for farmers to coordinate with the yard master to cross through the yard, if rail operations and safety conditions permit, or development of additional access roads.

Factor: 0

Restatement 007546 233

STUDY METHODOLOGY

A variety of comments focused on the transportation study presented in the Draft EIS. One commenter stated that the project was found to not have any (or little) harm to the transportation systems due to the Board's criteria for measuring harm and impacts.

One commenter stated that the analysis of traffic delays is flawed because the average daily traffic volumes were averaged over a 24-hour period. It is believed that peak periods will cause significant delays. Of special concern were the cities of Rochester and Winona. One commenter stated that the Draft EIS calculations were incorrectly based on ADTs averaged over a 24 hour period, but should have been averaged over normal "business" hours of 6 am to 7 pm. One commenter stated that the traffic count information was dated and unreliable.

One commenter stated that a methodology driven by train speed will always result in no impact unless there is a dramatic increase in train traffic. The analysis is not a system analysis but an analysis of impacts to individual motorists at individual crossings. The commenter states that the analysis should have assessed crossing level impacts, corridor level

Similar

impacts and system level impacts, and the analysis misses the 700% increase in the number of motorists who would be stopped by a train on a daily basis, the \$1.1 in indirect costs due to traffic delay, and the 140% increase in accidents. Significant indirect costs not addressed include delays, societal costs of accidents, and cost of increased air pollution.

Response

SEA has conducted the traffic delay analysis in accordance with previously established methods of analysis. The primary source of the data used in the traffic analysis was from the FRA's grade crossing database. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

The criteria and standards used in the analysis were consistent with those previously developed by the Board's for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

Appendix G.2.5 of the Draft EIS presents a formula for calculating the vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available.

The criteria and standards used in the analysis were consistent with those previously developed by the Board's for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

The lack of national standards and guidelines to address vehicular delay at highway/railroad crossings have required the Board's to develop indicators that can help screen where obvious traffic congestion problems may occur. These same methodologies were applied to this project.

The number of daytime trains is defined simply as the "average number of thru trains per day during daylight" in the Railroad-Highway Grade Crossing Handbook-USDOT. For this analysis the daylight hours of 7 AM to 10 PM, or 15 hours, were chosen so as to be consistent with the hours used for the noise analysis. Furthermore, the use of the extended daylight hours resulted in a more conservative analysis for accident prediction.

Factor: 0

Restatement	007546	234
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Accidents

One commenter stated that the predicted accidents were understated because traffic data was 6 to 12 years old from the MNDOT and the FRA and came, in part, from the 1994 MNDOT State Aid Count Maps. The commenter believed that the study should have used the Southern MN Rail Corridor Safety Plan that identified traffic counts at every highway-rail intersection through 1998. Also, Rochester-Olmsted Council of Government count estimates provided during scoping appear to have only been used when no other data was available, using older data in favor of these numbers.

Response

SEA used the FRA's grade crossing database as the primary source of data used in the traffic analysis. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

Factor: 0

Restatement 004577 3

One commenter is concerned about the control of Vegetation and Noxious Weeds near the rail line.

Response

SEA recognizes the concerns expressed for the control of weeds near the proposed rail line and in the project area. SEA has proposed specific mitigation measures, as outlined in Chapter 12 of this Final EIS. Specifically, in negotiations with farmers and ranchers, SEA recommends that DM&E shall be guided by the Land Use Mitigation Policy and Plan negotiated between the Applicant with the Landowner Advisory Board, which addresses the following areas of concern:

- Direct and indirect land loss.
- Displacement of capital improvements (wells, windmills, corrals, outbuildings, irrigation systems, etc.).
- Noxious weed control.
- Fencing.
- Livestock casualty.
- Fire prevention and suppression
- Fire casualty.
- Construction-related impacts.

In addition, prior to initiating project-related construction activities, SEA recommends that DM&E consult with the Natural Resource Conservation Service, local grazing associations, and interested landowners, to develop an adequate plan for controlling noxious weeds. The plan should include an approved list of herbicides. SEA recommends that Applicant shall certify to the Board compliance with this condition in quarterly reports.

Factor: 0

Restatement 004577 1

One commenter is concerned about the control of Vegetation and Noxious Weeds.

Response

SEA recognizes the concerns expressed for the control of weeds near the proposed rail line and in the project area. SEA has proposed specific mitigation measures, as outlined in Chapter 12 of this Final EIS. Specifically, in negotiations with farmers and ranchers, SEA recommends DM&E shall be guided by the Land Use Mitigation Policy and Plan negotiated between the Applicant with the Landowner Advisory Board, which addresses the following areas of concern:

Direct and indirect land loss.
 Displacement of capital improvements (wells, windmills, corrals, outbuildings, irrigation systems, etc.).
 Noxious weed control.
 Fencing.
 Livestock casualty.
 Fire prevention and suppression
 Fire casualty.
 Construction-related impacts.

In addition, prior to initiating project-related and reconstruction activities, SEA recommends DM&E shall consult with the Natural Resource Conservation Service, local grazing associations, and interested landowners, to develop an adequate plan for controlling noxious weeds. The plan should include an approved list of herbicides. SEA recommends that the Applicant shall certify to the Board compliance with this condition.

Factor: 0

Restatement 000404 44

Dust Suppression

One commenter requested clarification on the use of water for dust suppression, specifically the contingency plan when water is not available, the location of contingency water, and the impact on construction from a lack of water. The commenter also stated that the responsible party for monitoring dust suppression should be identified. The commenter requested an analysis of impacts from unsuppressed dust blowing onto adjacent grass and causing dust pneumonia to livestock.

Response 0

Water for dust suppression would be obtained primarily from private wells and stock ponds under agreement with property owners. Owners would be compensated for water taken. Some water might be drawn from the Cheyenne River depending on availability and the ability of the Applicant to obtain the necessary regulatory approvals. Water trucks will be used to carry water to the right-of-ways and haul roads where it will be used to control dust. No water shortages are foreseen that would inhibit these dust suppression controls. Dust suppression should adequately keep dust from impacting local livestock. Ch. 12 of the Final EIS describes SEA's recommended mitigation. SEA recommends that third-party contractor assist SEA in the monitoring and enforcement of mitigation measures on an as-needed basis.

Factor: 0

Restatement 000404 45

Operating System

One commenter requested an analysis of impacts if the Communication Board Train Control (CBTC) operating system were not approved if it remained in testing.

Response 0

The CBTC operating system is currently being tested by two Class I railroads in the Pacific Northwest. If the CBTC system is not approved, or not approved in time to be deployed by the DM&E, dispatching services and train separation would be conducted under Centralized Traffic Control (CTC). The Applicant has not based the proposed operations or investment costs on the CBTC system and can operate efficiently with a standard CTC system.

Factor:

Restatement 000404 56

Other Construction Comments

One commenter took exception with the phrase "might not be possible" on page 2-49 related to reconstruction, requesting more precise language. Another commenter noted that the statement on page 2-24 of the Draft EIS indicated that the yard and pre-cast plant concrete plant would be set up in "early 2001." The commenter also noted that this was not feasible.

Response

The phrase "might not be possible" referred to a potential inability by DM&E to run trains at desired speeds along reconstructed lines. The statement reflected the uncertainty of the operating characteristics of rail line along a right-of-way outside of the existing DM&E right-of-way. This statement accurately reflected the uncertainty of these particular operating characteristics. It is anticipated that construction would begin approximately 2 - 3 years after project approval. No specific start date has been set.

Factor:

Restatement 000404 88

General Mitigation

A number of commenters expressed concern about the mitigation language in the Draft EIS. One commenter stated that language describing the "regular and prompt repair of construction fencing" should be quantified. Another commenter expressed concern that the mitigation phrases like "to the extent possible" and "where appropriate" should be stronger. Another commenter stated that language that the Applicant would "minimize" the train blockage of crossings to the extent possible should be tied to enforceable guidelines to be followed by the Applicant.

Other general mitigative suggestions included the covering of rail cars, the consideration of tunnels, and the consideration of elevated structures in areas where views are important and cut and fill might be expensive. One commenter stated that a functioning spark arrester should trap or pulverize exhaust carbon particles to a size below .023 inches in diameter as they are expelled from the exhaust. One commenter requested mitigation language that "grinding operations shall be conducted only after consultation and approval of local fire authorities, such as the County Fire Warden" as a measure to prevent fires along the joint track during hot, dry and windy conditions.

One commenter requested that all mitigation in the state of MN be the sole responsibility of DM&E, including safety improvements and grade separations.

Response

SEA has recommend mitigation in response to the potential impacts associated with the proposed project. SEA recommended that the Applicant consult with appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. Implementation of all grade crossing protections will be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. As agreed to by the Applicant, the Applicant shall pay 90 percent of the costs associated with these project-related grade crossing protections.

Additionally, specific mitigation, that include timing considerations, will be provided to communities that have executed Negotiated Agreements with DM&E. SEA recommends that DM&E will complete grade crossing protections prior to moving annual tonnage level of coal (20 million tons, 50 million tons, or 100 million tons) specified in its plan and certify to the Board such completion as part of its quarterly reports.

SEA also recommends that DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Chapter 12 of the Final EIS describes SEA's recommended mitigation. SEA recommends that the inspection of fencing conducted regularly and damaged fencing repaired promptly.

SEA acknowledges the concerns expressed by commenters for coal dust from cars. The rail cars used to haul coal are principally owned by utilities and are beyond the control of the Board. Additional information about fugitive coal dust can be found in Chapter 3 of this Final EIS. Specific mitigation measures are presented in Chapter 12 of the Final EIS. Comments and responses related to the aesthetic impacts of the project on views are found in Chapter 3 of this Final EIS. To the extent practicable, SEA recommends that the Applicant's plan for fire prevention and suppression shall ensure that all locomotives are equipped with functioning spark arrestors on exhaust stacks.

The Surface Transportation Board has limited authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority.

Factor: 0

Restatement 007564 5

Cumulative Impacts

One commenter stated that the Draft EIS fails to take into account reasonably expected future conditions, in conflict with 40 CFR 1508.7 (cumulative impacts) because no traffic projection assumptions are used to calculate future impacts. The commenter stated that static traffic data does not accurately assess future conditions, and misses potential mitigation.

Response

SEA knows of no objective means of analysis to measure the cumulative impacts of every crossing that takes into consideration delay, accidents, emergency response delay, potential pedestrian concerns and bicyclist concerns. The cumulative analysis is based on "engineering judgement" that takes place during the state's diagnostic review process.

It is not common traffic engineering practice to install traffic signals or highway/railroad grade crossing active warning devices based on future traffic projections. The warrants for traffic signals are outlined in The Manual on Uniform Traffic Control Devices (MUTCD)-USDOT. The traffic and safety analysis used in the Draft EIS is consistent with the approach that active warning devices are added to the roadway facility when the traffic volumes actually reach the warranted level.

Factor: 0

Restatement 007533 8

Owatonna

The City of Owatonna requested assurances that interchanges to the north would be accomplished at Mankato. One commenter stated that Owatonna should have the benefit of a mitigation agreement that is as good as other cities along the rail route, and specifically a resolution of the I&M Interchange.

Commenters noted that the Final EIS should address the large number of at-grade crossings through any city, the costs imposed on Owatonna and the railroad's responsibility for these costs, and the location of sidings. One commenter stated that Owatonna construction should be conditioned on current and future plans for Highway 14, local road projects, and the I&M Rail Link.

The City of Owatonna commented in favor of a bypass and the community partnership agreement that should be considered in the FEIS.

Response

The applicant has indicated that where feasible, all rail crossings would be separated. It plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Missosota have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points. However, the Board determined that the lack of a signed agreement was not a reason for disapproval of the transportation-related aspects of the project. If the project is approved, the Board is available to ensure the interchange of cars with connecting carriers when reasonable agreements cannot be reached. No negotiated agreement is currently in place between the Applicant and the City of Owatonna. For a more thorough discussion of the I&M rail link in Owatonna, please refer to Chapter 8 of this Final EIS.

Potential future rail traffic on the I&M line, and impacts to communities served by the IMRL, was determined to be speculative and not within the scope of the EIS.

Chapter 8 of the Final EIS presents a brief discussion of the Owatonna alternatives, a summary of potential impacts, and a description of the I&M Link through Owatonna.

SEA reviewed the comments regarding grade separations in Owatonna. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts to Owatonna and determined that the crossings would not meet SEA's criteria for grade separations.

SEA evaluated the potential environmental impacts of the alternative routes through the Owatonna area and determined that the through-town route is the preferred alternative.

Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the preferred alternative, if the Board approves the project.

The preferred alternative, as described in Chapter 3 of the Final EIS, does not include a bypass of Owatonna. Chapter 8 of the Final EIS presents the basis for this decision.

Factor:

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Restatement

008099

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Route Planning and Engineering

Several commenters expressed concerns about the rail planning and engineering described in the Draft EIS. One commenter indicated a discrepancy for the total miles of new rail. Alternative D was listed as 360 miles compared to 273.8 miles for Alternative C, however, Alternative D utilizes existing line south of Smithwick to Wasta. Another commenter requested the total number of miles that would not be upgraded. One commenter stated that if grade were an important criteria, then the existing route through Rapid City would be preferred. However other places in the document say that distance is the primary consideration. One commenter noted that achievement of a 1-% grade would be difficult throughout the route. The same commenter noted that profiles were shown for Alternative D but not for B & C.

One commentor noted that the Draft EIS stated the rebuild would require a right-of-way wider than 200 feet but that it was unclear if DM&E owned the necessary right-of-way. The commentor requested the analysis of right-of-way impacts. A commentor noted that final design information was not available making impacts difficult to quantify. The commentor requested a second Draft EIS so design information could be presented and commented on by the public.

Response

SEA recognizes that the Draft EIS presented a wide combination of alternatives and segments. The preferred alternative, Alternative C, will consist of approximately 580

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miles of upgrade between Wall, SD and Winona, MN.

Factor:

0

Restatement 008609 3

One commenter stated that the project would cause intersection delays in Austin, Minnesota for the 350 trucks that access the Hormel plant via 8th Ave. NE each day.

Response

SEA has examined intersection impacts along the proposed project route. The analysis indicates that the referenced intersection would not be significantly impacted. Mitigation measures pertaining to all crossings can be found in Chapter 12 of this Final EIS.

Factor:

0

Restatement 007543 10

Brookings

A number of commenters stated that routing the project through Brookings would result in grade separations and the relocation of property owners, closing of streets and new business entrances made and cause general traffic interruption and delay.

Response

Ch. 12 of the Final EIS describes SEA's recommended mitigation. SEA, recommends that the Applicant determine if the bridge over 6th Avenue in Brookings, South Dakota, requires reconstruction to permit movement of unit coal trains. If such a determination is made, SEA recommends that the Applicant will coordinate with the City of Brookings and the South Dakota Department of Transportation to explore whether the bridge can be designed and constructed to ensure safe passage of emergency vehicles.

Additional mitigation proposed by SEA is for DM&E to implement pedestrian crossings mitigation in Brookings. For the crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, SEA recommends that the Applicant shall install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains. The Applicant shall report to the Board that they have complied with this condition as part of its quarterly reports required at Condition 139 prior to operation of unit coal trains through Brookings.

Factor:

0

Restatement 007658 1

Winona

Commenters, including Winona County, commented that the EIS should include additional information on the location of passing tracks, the extent of marshal yards and other switching movements, train speeds at passing tracks and points of loading or switching, future vehicular traffic volumes, intermodal connections, and mitigation (including four quadrant at-grade crossing systems, rebuild of tracks, and fencing).

One commenter stated that the Goodview and Winona area require not less than three grade separations on the CP line, with one separation no further east than Pelzer Street in Winona. The same commenter stated that existing crossings at 41st Avenue, 54th Avenue, and 69th Avenue should be upgraded to whistle-free standards, and that a grade separation should be constructed at Minnesota City. One commenter noted that the Draft EIS did not describe any special engineering conditions required for the Stockton grade, a 6 percent downhill grade with a curve at the bottom, over Winona Hill.

Response

In response to public comments, SEA conducted additional analysis of marshalling yards. This additional analysis is located in Chapter 4 of this Final EIS. Information related to transportation mitigation is found in Chapter 12 of the Final EIS.

The City of Winona, as discussed in the Draft EIS and this Final EIS, is not located on the DM&E line, but would experience down-line impacts if DM&E should interchange traffic with the Canadian Pacific Railroad (CP). The CP rail line does go through Winona. At the urging of the City of Winona, SEA included an analysis of potential down-line impacts on the City of Winona associated with DM&E's proposal in the Draft EIS. During the comment period on the Draft EIS, commenters from Winona requested that the Board impose conditions on DM&E designed to minimize environmental impacts to the City. However, the potential impacts on Winona that SEA analyzed would be generated by train traffic on the CP rail line, on property owned and operated by CP, not DM&E. SEA cannot recommend mitigation requiring DM&E to take action on property not its own, nor can SEA recommend mitigation imposing requirements on CP, a carrier not before the Board in this proceeding. As a result, the mitigation set forth in this chapter does not include measures for the City of Winona.

Factor: 0

Restatement 008168 1

Wyoming

One commenter suggested the location of grade separations in Wyoming at US Highway 85 south of Newcastle and Wyoming Highway 450 near the mines.

Response

SEA reviewed the comments regarding grade separations in Wyoming. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts to Wyoming and determined that the crossings would not meet SEA's criteria for grade separations.

Factor: 0

Restatement 006450 2

Pleasant Grove

The Pleasant Grove Township commented in opposition to the Rochester Bypass because it would run parallel to I-90 causing road closings and landlocked parcels and access problems.

Response

The proposed Rochester Bypass options, Alternatives R-3 and R-4, are not included as part of the Final EIS's preferred alternative. Please refer to the discussion in Chapter 9 of the Final EIS for an analysis of the alternatives considered for the Rochester area.

Factor: 0

Restatement 006451 2

Winona

One commenter stated that Goodview and Winona should be considered in the Draft EIS for increased traffic impacts related to the project. The City of Winona requested an east (Louisa Street) and west end (Pelzer Street) overpass along with a crossing in the central city with DM&E paying all costs related to the three proposed grade separations.

Response

SEA reviewed the comments regarding grade separations in Goodview and Winona. SEA determined that grade separations are not warranted for these communities. SEA completed a thorough evaluation of the potential impacts to Louisa Street and Pelzer Street and determined that the crossing would not meet SEA's criteria for grade separations. Though SEA completed an evaluation of the potential operational impacts in Winona, the rail line that runs through the City is owned and operated by CN. The Board cannot impose mitigation on rail lines owned by other railroad companies.

Factor:

Restatement 007557 31

Winona
 One commenter stated that there are 7 crossings in Winona that meet the 300,000 indicator (number of trains per day multiplied by the number of vehicles per da at a crossing)for being a grade separation candidate. The Board should order the DME to pay full costs for construction of two grade separations in Winona.

Response

SEA reviewed the comments regarding grade separations in Winona, Minnesota. SEA completed a thorough evaluation of the potential impacts to the grade crossings in the community and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's proposed transportation mitigation.

Factor: 0

Restatement 008099 26

Borrow Pits
 One commenter stated that the borrow pits should be identified and related impacts assessed. Additionally, the commenter requested that the EIS provide information about the rights under eminent domain laws for landowners who do not provide borrow pits, the environmental impacts of the borrowing, and the proposed mitigation for borrow pits.

Response

It is SEA's understanding that the amount of borrow material needed for construction will be based on final engineering plans, known available borrow sources, and the extent to which cut material can be used. SEA will require that DM&E not encroach on private property to obtain borrow material. DM&E would prefer to acquire borrow pit material through negotiations with land owners and not through eminent domain. Borrow areas on USFWS lands will be used only after a determination of need has been established and the applicable permits obtained. SEA's mitigation plan has recommended that all areas disturbed by construction or reconstruction activities be restored as close to their original condition as practical. In addition, a Community Liaison will be established to consult with affected land owners, communities and agencies.

Factor: 0

Restatement 007543 3

Brookings Existing Route
 Commenters provided statements related to the existing route through the City of Brookings. One commenter stated that the City of Brookings had never had a large volume of train traffic and was not built to accommodate such traffic while another stated that the increased rail traffic would have an adverse impact on the city. One commenter expressed concern that routing the project through Brookings would make service to existing customers more difficult and less timely. Several

commenters stated that additional right-of-way would be required to construct any future passing sidings in Brookings.

Response

Based on the analysis in the Draft and Final EIS, SEA determined that Alternative C, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the proposed project.

Chapter 6 of this Final EIS describes the impacts associated with the alternatives proposed for the Brookings area. Chapter 12 of this Final EIS describes SEA's final recommended mitigation requirements. If the Applicant determines that the bridge over 6th Avenue in Brookings, South Dakota, requires reconstruction to permit movement of unit coal trains, the Applicant shall work with the City of Brookings and the South Dakota Department of Transportation to explore design and construction elements of the bridge, and a determination will be made as to whether the bridge can be designed and constructed to ensure safe passage of emergency vehicles.

For the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail in Brookings, South Dakota, the Applicant shall install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains. SEA recommends that the Applicant shall also report to the Board that they have complied with this condition as part of its quarterly reports prior to operation of unit coal trains through Brookings.

Factor:

0

Restatement 007432 3

A number of commenters provided comments related to the proposed M-2 Alternative. One commenter stated that trestles and other structures had not been identified for Blue Earth County, and that the EIS did not include an evaluation of engineering reasonableness of the Southern Route. One commenter opposed the closing of any county roads that provided access for farmers or rural residents. The State of Minnesota commented that the Mankato bypass alternative with 19 new at-grade crossings was not acceptable and that the Board should identify an appropriate mix of road closures, safety measures, and grade separations.

One commenter requested assurances that train operations would not fail, leaving the City with unusable train infrastructure.

Response

SEA provides detailed mitigation measures in Chapter 12 of this Final EIS. If Alternative M-2 is built, the Applicant shall explore with Blue Earth County the feasibility and cost effectiveness of constructing new rail on a trestle or bridge rather on fill within the Blue Earth River Valley.

The Applicant shall coordinate with the Federal Railroad Administration, the state Department of Transportation in Minnesota, and local road authorities to develop a plan for the identification and eventual closure of limited-use public crossings, particularly those at or below 100 ADT, where appropriate alternative public crossings are available.

A financial fitness submittal prepared by the Applicant was reviewed by the Board. The financial fitness test is not to protect the carrier or its investors but to protect existing shippers from a carrier's proposed action. The Applicant developed five different financial scenarios based on three tonnage and three netback assumptions. The financial scenarios were reviewed by the Board and a finding of no harm to existing shippers and receivers was met by the Applicant. The findings are found in Appendix A of the Draft EIS.

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Factor:

Restatement 007559 62

One commenter presented specific mitigation requests for property acquisition, home retrofitting, fencing and landscaping and sound wall construction.

Response

SEA acknowledges the concerns of citizens and jurisdictions to have adequate mitigation. SEA has recommended a number of specific mitigation measures in Chapter 12 of this Final EIS. In addition, localities have negotiated mitigation agreements directly with DM&E.

Factor: 0

Restatement 007557 18

MINNESOTA ROADWAYS

Many commenters provided comments on highways, roads, and transportation systems in the State of Minnesota. One commenter stated that the Board did not evaluate or consider the need for grade separations. Nationally, traffic figures in excess of 300,000 are used as an indicator of need for grade separation. The commenter stated that MNDOT's Southern Minnesota Rail Corridor Safety Study identified 20 potential candidates for grade separations along the DM&E corridor. MNDOT was especially concerned about Rochester and Winona and Mankato.

Response

SEA reviewed the comments regarding grade separations in Minnesota and determined that two grade separations would be warranted in Rochester. SEA completed an evaluation of the potential impacts at other locations and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's recommended mitigation, which includes the two grade crossings in Rochester. Chapter 9 of the Final EIS describes the traffic analysis conducted for Rochester.

Factor: 0

Restatement 008611 10

The proposed bypass will limit any expansion to the Rochester Airport.

Response

SEA is recommending in this Final EIS that the Rochester Bypass be eliminated as an alternative to the proposed project. A detailed analysis of the Rochester Bypass considerations can be found in Chapter 9 of this Final EIS.

Factor: 0

Restatement 007557 19

Many commenters from the Rochester area expressed concern for rail plans, construction, operations and mitigation of impacts. One commenter noted that Rochester faced a higher risk for problems because the City had expanded around the railroad. 182/12 A number of commenters noted that the Draft EIS reported a number of existing trains through Rochester greater than three per day. One commenter noted that the impact from the Rochester-requested high-speed rail line service to Chicago and the Twin Cities would be no worse than the proposed project.

Response

Chapter 9 of the Final EIS describes in detail the impacts associated with the proposed alternatives in Rochester and SEA's recommendations. Chapter 12 details the mitigation planned for the City of Rochester. As Chapter 12 of the Final EIS describes, the Applicant shall install two grade-separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. The Applicant shall complete installation of one grade-separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. Applicant shall complete installation of a second grade-separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year.

Factor: 0

Restatement 007559 20

The City of Mankato expressed concern that the Draft EIS made no recommendations for grade separations or grade crossing closures. The City of Mankato requested that DM&E improve or mitigate traffic impacts relative to the project, through operational planning, track design, grade separations, and other available technologies.

One commenter stated that train traffic increases will exacerbate traffic and circulation issues on Mankato where grade separations are needed. These increases warrant the Board to order the DM&E to pay for all costs associated with construction of grade separations.

Response

SEA reviewed the comments regarding grade separations in Mankato and determined that grade separations are not warranted for Mankato. The M-3 Alternative assumed the construction of a new rail within the existing Union Pacific (UP) rail corridor. The existing trackage rights agreement between DM&E and UP does not preclude a future alternative of shared trackage rights, however, this was not determined to be a viable alternative under the existing agreement. Renegotiated trackage rights between DM&E and UP, and a decision to utilize those rights for the proposed project, would necessitate an examination of environmental impacts by the Board.

In Chapter 12 of this Final EIS SEA provides mitigation measures for the M-3 Alternative, should this alternative become a viable route. If built, the Applicant shall install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains for the pedestrian crossings of the Sakatah Singing Hills State Trail, Blue Earth County. The Applicant shall certify to the Board that they have complied with this condition as part of its quarterly reports required at Condition 124 prior to operation of unit coal trains along Alternative M-3.

Additionally, for M-3, the existing rail corridor alternative through Mankato, if the Applicant determines that it must rebuild the existing bridge over the Blue Earth River to permit operation of unit coal trains, the Applicant shall consider incorporating a pedestrian/bicycle crossing as part of the new rail bridge design.

Factor: 0

Restatement 007670 20

Two commenters stated that although the Draft EIS stated that derailments were unlikely, they do occur and should be analyzed.

Another commenter stated that DM&E was responsible for health and safety issues whether or not the project is approved. One commenter noted that many safety measures would not be installed until tonnage reached a predetermined level, but accidents would be more frequent in the early stages of the expanded service.

Response

SEA did not analyze derailments as part of this EIS. As indicated in Chapter 1, the proposed project would replace rail ties, upgrade track steel, and implement train signaling systems, with the intention of reducing accidents, including derailments.

SEA recognizes citizens' interest in safety improvements and that proposed mitigation measures include timing for implementation. The timing for mitigation is presented in Chapter 12 of this Final EIS. Timing stipulations include construction schedules and increases in train traffic.

Factor: 0

Restatement 007705 5

For construction of the switching yard a township road will have to be closed, creating a hardship on the township.

Response

SEA received comments from citizens concerned with access near switching yards and sidings. DM&E will consult with the state Department of Transportation in Minnesota as well as local road authorities in the affected counties and Utica Township to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals. To ensure the safe movement of vehicles near the rail line, DM&E will construct roadway approaches and rail line crossings for both new and existing grade crossings according to the standards of the American Association of State Highway and Transportation Officials (AASHTO) design manual. DM&E will also follow applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: 0

Restatement 006453 7

One commenter stated that the projected delays do not pass the "common sense" test of only 30 seconds. Calculations appear to be very sensitive to the assumptions used in Tables 3-MN-G33 to G38 that assume 12 trains currently. The commenter believed that the delays will be closer to 40 seconds, increasing delays under R-2 to 4.2 minutes. If current number of trains were used then blocked crossing time could double for R-2.
6453 #7

One commenter stated that the Draft EIS calculations for delays are incorrect because the calculations ignore the blockage times required for the safety switch to open and close the warning devices. The commenter stated that an additional 42% increase in delays at grade crossings should be included making a 135 unit coal train delay 3.4, not 2.6, minutes. The commenter noted that the figures in Table 3-MN-G34 are averaged, which diminishes calculated wait times, and does not consider that vehicles cannot move until the vehicle in front of them has moved.

One commenter noted the criteria used 1) to look at increases in driver delay caused by a single train and 2) daily delay created by trains averaged over all the drivers using a crossing, including the LOS standards developed for Two-way Stopped Control Intersections (TWSC). The commenter stated that the necessary empirical observations needed to develop relevant LOS criteria for the crossing had not been completed. Also, the commenter felt it was a faulty assumption that motorist judgement at highway rail crossings is similar to that exercised at TWSC intersection.

One commenter stated that the closure and re-routing of roads as a result of reconstruction activities (as described on page 3.2-77) were not addressed in the Draft EIS and should be analyzed.

Similar

One commenter stated that the Board should have utilized ADT and roadway lanes to calculate the Average Delay per vehicles, and that base data used in the transportation system analysis errs in its assumptions regarding vehicular traffic, train traffic, type of grade crossing protection to be used, and data for analysis of predicted accidents. Also in dispute is the claim that different criteria were used for different communities, the use of measurements focused on relative impacts, and faulty traffic delay calculations. The results that show that accidents in Minnesota are not significant unless they occur once every eight years is considered discriminatory by the commenter, who requests that Rochester's analysis be adopted in the Final EIS.

One commenter stated that once road volumes exceed 500 vehicles in the peak hour, (or 10,000 vehicles per day) the Draft EIS equations understate the expected delays by about 30-35%. One commenter noted that the Draft EIS assessed the length of the queues but provided no recommendation related to queues. While the total amount of congestion will be less, it may occur more frequently, 15 -16 times a day.

One commenter stated that traffic delay data is primarily relevant for comparing on a relative basis the various highway rail crossings and not as a measure of impact.

Response

The criteria and standards used in the delay analysis were consistent with those previously developed by the Board for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

The correlation between highway/railroad grade crossings and two-way stop-control (TWSC) intersections, as opposed to signalized intersections, is a matter of professional opinion since the Highway Capacity Manual does not currently address this special type of intersection. It is agreed that the operation of a grade crossing intersection is not similar to crossings having warning devices consisting of gates and flashing lights. However, the majority of crossings along the system only have passive warning devices that do have similar operating characteristics to TWSC intersections. Therefore, the established thresholds for a TWSC intersection was applied system-wide.

Appendix G.2.5 of the Draft EIS presents a formula for calculating vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available.

There are no national standards and guidelines to address vehicular delay at highway/railroad crossings. This situation can make it difficult for transportation engineers to come to a consensus on the appropriate level or method of meaningful analysis to measure post-construction delays and impacts. The Board has in the past developed indicators to help screen where obvious traffic congestion problems may occur. These same methodologies were applied to this proposed project.

Factor:

0

Restatement

007564

2

A number of commenters remarked on the proposed Rochester Bypass. Some commenters expressed a general concern for the environmental impacts of the Bypass. One commenter believed that the cost of a bypass had been underestimated and that it would cost over \$200 million. A commenter stated that the Bypass would deprive customers access to local farm businesses. One commenter stated that the Bypass should have grade separations at Highway 14, west of Byron and Highway 63, north of Stewartville. One commenter suggested that the Bypass be linked to future high-speed rail connections between the Twin Cities and Chicago and between the Twin Cities and Rochester airports. One commenter stated that the DM&E route should parallel I-90 to the extent possible.

One commenter stated that the Draft EIS summarized construction-related transportation for R-2 and R-4 differently, noting the installation of grade crossings for R-4 but ignoring the number of grade crossings that have to be re-installed for R-2. The commenter stated that bus routes on R-2 were not analyzed, noting 373 school buses per day that cross R-2 compared to 3 to 5 crossings per day for R-4.

The Final EIS should also reflect transportation mitigation impacts of the grade separations proposed for R-4, including Highways 14 in Byron, Highway 63 at the airport, and Highway 52.

Response

The Rochester Bypass was determined to have environmental and geological constraints that precluded the siting of a viable route. The preferred alternative is the existing rail corridor through Rochester. For a more detailed analysis of the alternatives around and through Rochester, MN, please refer to Chapter 9 of this Final EIS.

After thorough evaluation of the alternatives for routing DM&E traffic through the Rochester area, SEA determined that the existing route through Rochester (R-2), with appropriate mitigation, is the environmentally preferred route, if the Board approves the proposed project. For a detailed analysis of the alternatives in the Rochester area, please refer to Chapter 9 of this Final EIS.

As Chapter 12 of the Final EIS describes, the Applicant shall install two grade-separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. The Applicant shall complete installation of one grade-separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. The Applicant shall complete installation of a second grade-separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year.

Additional impact analysis of the project on bus routes can be found in Chapter 9 of this Final EIS.

Factor:

0

Restatement

007554

36

Train Count Assumptions

Many comments on the transportation analysis dealt with delays at intersections. One commenter noted that the Draft EIS Vol II-B, Appendix H, shows that most rail traffic moves during daylight hours and is not evenly spaced throughout the day. The commenter believes that impacts are diminished by averaging over 24 hours, and that the delay calculations for the No Action through Rochester are based on 12 trains per day, although there are only 3 trains per day. The resulting delay is actually four times greater than defined, and should be re-analyzed.

Response

SEA conducted the traffic analysis presented in the Draft EIS using FRA's grade crossing database as the primary source of data. This data was improved upon by using updated traffic counts and other physical characteristics supplied by the Minnesota Department of Transportation (document dated 1/12/99). DM&E provided train operations information (train counts, length, & speeds). The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary.

The criteria and standards used in the analysis were consistent with those previously developed by the Board for impact analysis. The number of crossings, type of protection, driver behavior, and types of accidents can vary from state to state. The methodology accounted for these variations by applying actual train/vehicle accident data for each state

to establish the threshold criteria. There is no precedence or known research conducted to support that an 80th percentile accident rate applied nationally would account for accident trends inherent to each state.

Factor:

0

Restatement 007559 12

Commenters expressed concern over a renegotiated trackage rights agreement between UP and DM&E that might avoid the jurisdiction of the Board and NEPA. The same commenter stated that the EIS should discuss an action alternative of a renegotiated trackage rights agreement for UP track upgrades or the construction of a second parallel track in the UP right-of-way.

The City of Mankato provided a mitigation plan for Board consideration under the M-3 alternative. The City requested that the Board ensure shipper access to the DM&E line. Prior to mitigation plan finalization, the City requested that DM&E discuss with them the shippers need for access.

The City of Mankato requested that DM&E define needed right-of-way, properly construct and maintain tracks and rail beds, and maintain locomotives and cars lines to minimize noise and vibration, and maintain the right-of-way per the City Code.

One commenter advocated continued access through Mankato to provide a competitive alternative for the major grain processors in Mankato.

Response

The M-3 Alternative assumed the construction of a new rail within the existing Union Pacific (UP) rail corridor. The existing trackage rights agreement between DM&E and UP does not preclude a future alternative of shared trackage rights, however, this was not determined to be a viable alternative under the existing agreement. Renegotiated trackage rights between DM&E and UP, and a decision to utilize those rights for the proposed project would necessitate an examination of environmental impacts by the Board.

Should this alternative (M-3) become viable, the Applicant would define the needed right-of-way, properly construct and maintain tracks and rail beds, and maintain locomotives and cars lines to minimize noise and vibration, and maintain the right-of-way per the City Code. Mitigation to be considered under this alternative would include shipper access to the DM&E line, in consultation with the City.

The implementation of the M-2 alternative will neither undo the trackage rights agreement between UP and DM&E nor result in a cessation of service by DM&E along the existing corridor.

Factor:

0

Restatement 007546 14

A number of commenters took exception with the existing train traffic levels presented in the Draft EIS. The Draft EIS stated there were 12 trains per day, when in fact the number was closer to three. Commenters believed that this skewed the accident analysis and delay calculations. One commenter noted that the Draft EIS used only existing traffic data, and not projected volumes for the crossings analysis. This resulted in different recommendations by the State at 31 crossings. The same commenter stated that the EIS should acknowledge that the projected 37 trains will not all go east through Rochester and Winona, but interchange at Mankato and Owatonna.

Response

The primary source of the data used in the analysis was from the FRA's grade crossing database. This data was improved by using updated traffic counts and other physical characteristics supplied to us by the Minnesota Department of Transportation (document dated 1/12/99).

Appendix G.2.5 of the Draft EIS presents the formula that was used for calculating vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available.

Factor: 0

Restatement 008024 9

The Rochester Chamber of Commerce will meet to discuss the integration of the bypass into other transportation activities.

Response

SEA is recommending the Rochester Bypass as mitigation for the proposed project. A discussion of the Bypass impacts and SEA's recommendation are found in Chapter 9 of this Final EIS.

Factor: 0

Restatement 000003 1

EMERGENCY ACCESS

Numerous commenters commented on their concern that the proposed project could delay needed medical care -- either access by emergency response vehicles to homes or vehicular access to medical treatment facilities in locales such as Rochester.

Response

SEA is aware of the many concerns expressed for emergency care access across rail lines. As described in Chapter 12 of the Final EIS, which describes SEA's final recommended mitigation, SEA recommends that the Applicant consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. This will include the discussion of the possible installation by the Applicant of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. Such a display board would show the location of trains and/or the position of grade crossing warning signals.

Factor: 0

Restatement 000004 3

Mankato Bypass

Commenters stated that the Draft EIS should provide the number of highways affected by the southern route through Mankato and the kind of delays that could be expected. Another commenter stated that impacts to the 27 roads to be crossed by DM&E on the Mankato Bypass should be described. One commenter noted that in the Mankato area, highways 83, 22 South, 90, and 169 would require grade separations.

Response

SEA acknowledges the concerns of citizens relative to the proposed routes in the Mankato area. SEA reviewed the comments regarding grade separations for highways in the Mankato area and determined that grade separations are not warranted. SEA completed a thorough evaluation of the potential impacts to highways 83, 22 south, 90, and 169 and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 7 of this Final EIS discusses SEA's additional analysis of alternatives and impacts associated with the southern route alternative. Chapter 12 describes SEA's recommended mitigation measures for the project.

Factor: 0

Restatement 000038 2

Rochester/Olmsted County

A number of commenters stated that increased train traffic would cause delays in the Rochester area and cut the community in half. One commenter stated that a train 1.4 miles long could simultaneously block up to 12 grade crossings in Rochester. One commenter noted that sidings within Olmsted County are proposed to be 3 miles in length, and that the 40 mph speed on these sidings may not be slow enough for safe passage between trains. The commenter requested supporting documentation that this is a safe speed. One commenter stated that the Draft EIS does not address traffic seeking alternate routes when crossings are blocked. The commenter noted that vehicles would seek Highway 52 or Highway 63 south of Rochester. Highway 52 is already overloaded and would require mitigation through the construction of additional lanes.

The effects of grade crossing closures that would occur during reconstruction of the line through Rochester (as described on page 3.2-77) should be analyzed per the CEQ NEPA regulations.

One commenter stated that the Draft EIS failed to acknowledge the conclusions of the Southern Minnesota Rail Corridor Safety that showed the need for seven grade separations to resolve issues related through town.

One commenter stated that results that show the additional 34 trains through Rochester cause no substantial impact are incorrect.

Response

SEA recognizes the concerns for highway and rail safety in Rochester and Olmsted County. Proposed mitigation for the proposed project includes the installation, by DM&E, of two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at an other mutually acceptable location. SEA recommends that the Applicant will negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities and the City of Rochester on the design, location, and funding of these grade separations.

SEA recommends that DM&E complete the installation of one grade separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year, and that DM&E complete installation of a second grade separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year. SEA recommends that these grade separated crossings should be designed and located to facilitate the movement of emergency vehicles to and from medical facilities providing emergency services in Rochester, including St. Mary's Hospital and Methodist Hospital.

DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known.

Factor:

Restatement 000031 1

TRUCKS AND TRUCKING

A number of commenters believed that the project would further enable the movement of goods and reduce the number of trucks on the highway. 31 #1, 31 #5, 37 #2, 49 #3, 151 #8 One commenter stated that the Draft EIS should recognize that the project would result in improved highway traffic safety as a result of fewer trucks on the roadways. It should also be noted that traffic increases each year while rail infrastructure deteriorates.

Two commenters questioned the ability of trucks to move coal and noted that trucks are a far more superior method of moving farm produce, grain and livestock to market. One commenter asked how many trucks would be hauling coal from the PRB if the no action alternative were chosen. One commenter stated that the modest increase in coal traffic, 58,000 to 68,000 cars annually, would not significantly reduce truck traffic on Midwest highways.

Response

The Draft EIS discusses the potential for the proposed action to reduce truck traffic on highways. While a reduction in traffic volume can improve highway safety, other factors contributing to safety include speed, weather and roadway conditions, driver fatigue, and vehicle maintenance. Chapters 1 and 2 of the Draft EIS describe in detail the maintenance needs that currently exist for the railroad.

SEA has based the analysis of this proposed project on the Applicant's application to, in part, increase its capacity to move coal from the PRB region of Wyoming. There is no alternative to the proposed action that involves the movement of coal by truck. The No-Action Alternative as described in the Final EIS would be the continued movement of coal by existing rail operations. Better service for existing DM&E customers could have the benefit of decreasing the amount of truck traffic on the highways.

Factor: 0

Restatement 000150 5

Watercraft Impacts in Pierre

One commenter stated that the waterway in Pierre is restricted to pleasure craft and that an additional bridge would pose no danger to boating activities.

Response

The proposed action will not require the construction of a new bridge in Pierre. A discussion of the potential rehabilitation or reconstruction of the Missouri River bridge under the various alternatives is found in Chapter 5 of this Final EIS.

Factor: 0

Restatement 000155 7

Brookings Bypass

One commenter stated that the Brookings Bypass would required a new Interstate (I-29) overpass at a cost of \$2.6M, but would not be needed if the old line (Alternative 2) is retained. Another commenter stated that the Brookings Township Bypass would cause farmers to move equipment several miles and create numerous dead end roads in the Township, increasing snow removal and maintenance.

Response

The preferred alternative, as described in Chapter 3 of the Final EIS, does not include the Brookings Bypass. A detailed discussion of this alternative is in Chapter 6 of the Final EIS.

Factor: 0

Restatement 003663 1

There are local concerns that increased rail traffic will be detrimental to Medford. 3663/1

Response

Medford is located on IMRL and UP rail lines, north of Owatonna. SEA did not evaluate potential noise impacts from DM&E interchanging trains with other rail carriers on tracks owned by other rail carriers. DM&E does not currently have coal contracts therefore the routing and the number of trains on those routes would be speculative. A full evaluation of the potential noise impacts of the alternative routes through Owatonna may be found in Chapter 8 of the Final EIS.

Factor: 0

Restatement 000059 1

Rochester Sidings

The City of Rochester requested maps and drawings of the five sidings proposed entirely or partially within Olmsted County. The City asked if the sidings would be used as passing sidings or for marshalling yard purposes, and if they would be constructed in the initial phase to accommodate 40 million tons of coal.

One commentor requested that DM&E not construct sidings within 1260 feet of any residential area, or near grade crossings with an average daily traffic of over 1,000. One commentor asserted that the FEIS must fully examine the environmental impacts of DM&E's siding construction and operations, DM&E's intention to add a "second main track", and the possibility of operating more than the 37 trains indicated in the DEIS.

Response

SEA recognizes the concern for the placement of sidings and the potential impacts associated with these rail segments. Prior to construction, the Applicant will consult with the Minnesota Department of Transportation and local road authorities in the Olmsted County to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known. In Appendix I of this Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.

Environmental impacts were assessed for sidings within the proposed right-of-way for the project. Potential environmental impacts in Minnesota are described in Chapter 3 of the Draft EIS.

11/15/2001

Similar
0

Factor:

Restatement 000098 1

Stewartville

City of Stewartville stated that an at-grade crossing of Highway 63 would not work due to high traffic from Highway 63, I-90, and Highway 30. The Stewartville Public School District stated that seven school buses must cross the DM&E tracks 60 times a day and that safety and time delays were a concern.

Response

SEA reviewed the comments regarding grade separations in the City of Stewartville and determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts to Highway 63 and determined that the crossing would not meet SEA's criteria for grade separations. An additional discussion of the potential impacts in the Rochester area are presented in Chapter 9 of this Final EIS. Impacts associated with the proposed bypass of Rochester are not expected to be realized under the preferred alternative of using the existing route through the city.

Factor: 0

Restatement 005339 3

Utica

One commentor suggested the area west of Utica as a possible location for the proposed staging yard between Utica and Lewiston.

Response

SEA acknowledges the concerns associated with the placement of staging and marshaling yards. As Chapter 4 of the Final EIS describes how staging yard locations must meet multiple functions with minimal environmental harm. SEA's recommendation for the siting of the East Staging Yard, including environmental impacts, are also found in Chapter 4 of this Final EIS.

Factor: 0

Restatement 000186 11

Mankato Area/Blue Earth County

Many commentors provided comments related to the Mankato area and the proposed project. Some commentors expressed a general concern for rail impacts to Mankato and the City of Skyline.

Response

SEA acknowledges the concerns of Mankato area residents for potential rail impacts. Chapter 7 of the Final EIS provides a discussion of the impacts associated with alternatives in the Mankato area. Chapter 12 of the Final EIS describes specific mitigation measures for this area.

Factor:**Restatement** 000153 1**SOUTH DAKOTA ROADWAYS****Pierre**

A number of commenters noted that Pierre traffic congestion could worsen. One commenter noted that 40 trains a day at 6 minutes each means that access in the City will be blocked for 4 hours a day. The commenter favored a bypass. Two commenters noted that the current railroad bridge in Pierre required trains to slow to 15 mph through a curve, and that this would cause additional delays. One commenter stated that the Draft EIS did not analyze the potential impacts from the project on the 4-lane highway approved by Congress to be built from Interstate 90 to Pierre. One commenter noted that State Highway 34 crosses the railroad at an "S" curve with Sioux, East Wells, and Capital Avenues, and is the most heavily trafficked rail-highway crossing in the State of SD. The commenter does not believe it feasible to construct a grade separation at this location.

One commenter stated that grade separations should be required of DM&E at US 18 East of Edgemont, SD where it crosses US 18/385 (4.5 miles north of Oelrichs, SD). The commenter noted that US 18/385, the Heartland Express, is being upgraded to a four-lane highway and that overpass work should be coordinated with the SD DOT. The commenter believed that these are federal aid highways that require grade separations per the FHWA guidelines. The commenter also noted that the Harrison Avenue ADT (crossing 189843E) is 3,798, while the Draft EIS states it is 100 (Appendix G and H). Also, the ADT north of Oelrichs on US 18/385 is just over 2,600 vehicles (slightly more than reported in the Draft EIS), and the Farm Island State Recreation Area (Highway 34 near Pierre) has a higher ADT than is represented in the Draft EIS. The commenter stated that a turn lane would be needed onto Highway 34 to avoid backups. Finally, the commenter stated that project approval would result in an increase in construction traffic, and that the Final EIS should reflect the State's intent to strictly enforce SD State weight limitations.

Response

SEA has proposed specific mitigation for the city of Pierre. Recognizing the potential for traffic congestion in Pierre, SEA has requested that the Applicant install a grade-separated crossing at Sioux Avenue or at an other mutually acceptable location, to be completed within one year of commencement of unit coal train operations through Pierre. The Applicant shall negotiate with the appropriate state and local transportation authorities, City of Pierre, and Federal Railroad Administration on the design, location, and funding of this separation.

An additional discussion of the potential environmental impacts associated with the alternatives in the Pierre area can be found in Chapter 5 of this Final EIS. This discussion includes analysis related to the feasibility of the Pierre bypass, environmental and economic factors associated with the alternatives, and a comparison of impacts for the alternatives.

SEA has requested that the Applicant consult with the South Dakota Department of Transportation to consider if the grade separation proposed in Applicant's Grade Crossing Mitigation Plan of US Highway 18 east of Edgemont, South Dakota can be designed to accommodate future expansion of this highway to four lanes.

SEA reviewed the comments regarding grade separations in Pierre and determined that grade separations would be warranted. SEA completed a thorough evaluation of the potential impacts at other Pierre locations and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 5 of the Final EIS presents the potential transportation impacts of the proposed Bypass and through-town alternatives. Chapter 12 of this Final EIS discusses SEA's proposed mitigation.

Errors in the Draft EIS and corrections to them are addressed in Appendix A.

11/15/2001

Similar
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Factor:

Restatement 000166 7

Town of Mankato

One commenter expressed concern about traffic delays in the City of Mankato. One commenter stated that train traffic would increase greatly near the Land of Memories Park through Mankato on the current right-of-way.

Response

SEA is aware of potential delays in Mankato, MN. Mitigation measures outlined in Chapter 12 of this Final EIS provide that DM&E will work with the City of Mankato, Minnesota to determine if additional access can be developed to Land of Memories Park. Should a mutually acceptable plan for additional access be developed, the Applicant will work with the City to help the City secure funding for the project.

Factor: 0

Restatement 000481 6

A number of commenters provided comments on the siting, construction, and operations of switchyards, sidings, and marshalling yards. One commenter stated that switchyards should not be located near residents. One commenter stated that the exact locations of sidings and the spacing between sidings were not provided in the Draft EIS and were needed for communities to understand impacts. The Draft EIS language referred to sidings 12 to 25 miles down the line, but it was unclear if this distance was from exit to entrance or entrance to entrance.

Response

SEA agrees that the siting of sidings is an important element of the proposed project. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known.

In Appendix I of this Final EIS, SEA provides DM&E's Rail Siding Plan including a summary chart of milepost locations for proposed rail sidings under each Extension Alternatives.

Factor: 0

Restatement 007553 17

Project Impacts at the Port of Winona

A number of commentors stated that the EIS should analyze new construction of the DM&E rail into the Commercial Harbor, and identify environmental impacts, impacts to the National Wildlife and Fish Refuge, infrastructure impacts, and mitigation. The analysis should also examine the risk associated with spills of cargo as a result of increased rail transport along the Upper Mississippi River. A commenter stated that the Applicant should pay for all new construction and mitigation.

One commenter noted that the U.S. Army Corp of Engineers is involved in an Upper Mississippi River and Illinois Rivers System Navigation Study to assess environmental impacts and economic benefits of upgrades to transportation infrastructure. The Draft EIS should reference this study, although the proposed project is not a part of the study.

Response

The modes by which coal would reach a final destination were not analyzed as part of this EIS. There are presently no signed agreements with connecting carriers at the rail interchange points. Appendix A of the Draft EIS presents the Applicant's forecasted market shares and six core markets that are potential end-users of PRB coal.

DM&E does not currently intend, and would have no ability, to off-load coal unit trains to barges at Winona, Minnesota. Currently there are no facilities that exist in the vicinity of Winona that have the capability to off-load coal onto barges. DM&E does not provide direct service to any barge facilities. DM&E services Winona Harbor docks only through trackage rights and interchanges provided by other railroads. Projections about any future use of barges to off-load coal were determined to be speculative in nature and out-of-scope for this project. Should a barge facility be developed it would likely require an environmental review under NEPA.

SEA is aware of the U.S. Army Corp of Engineers' Upper Mississippi River and Illinois Rivers System Navigation Study. SEA provided a copy of the Draft EIS for use by the Corps in their study.

Factor:

0

Restatement

007557

17

Mitigation

General

One commenter believed that the addition of 34 trains per day would cause significant delays at a number of grade crossings in Minnesota, and that mitigation in the form of grade separations and Intelligent Transportation Systems (ITS) should be utilized.

Another commenter stated that DM&E should be required by the Board to fully honor the system structure as stated in the construction application to adequately interchange with other railroads. One commenter stated that it is imperative that DM&E repay outstanding debt to the Minnesota DOT as part of debt restructuring, and to maintain the economic viability of the railroad in Minnesota.

Response

SEA has proposed mitigation measures in response to the concerns about significant transportation delays and transportation safety. SEA is recommending that DM&E consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. This consultation will also be used to discuss the possible installation by the Applicant of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. These systems show the location of trains and/or the position of grade crossing warning signals.

Chapter 12 of this Final EIS describes SEA's recommended mitigation to address potential significant environmental impacts of the proposed project.

The Applicant has indicated that where feasible, all rail crossings would be separated. It plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Minnesota City have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points.

11/15/2001

Similar
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Factor:

Restatement 000197 1

Midland
One commentor stated that culverts would be put under trestles and that areas under bridges would be filled-in. The commentor requested that the Bad River be allowed to overflow its bank without damage to adjoining properties.

Response

SEA recognizes the concerns of citizens to protect the environment from construction earthwork. The rail line will be designed to allow the natural flow of waterways. As noted in Chapter 12 - Mitigation, the Applicant shall ensure that all culverts and bridges are clear of debris to avoid potential flooding and stream flow alteration. The Applicant shall also design all project-related drainage crossing structures to pass a 100-year flood, and shall reconstruct the existing rail line and construct the new rail line in such a way as to maintain current drainage patterns as much as possible. The Applicant shall regularly inspect and maintain culverts, bridge abutments, and bridges to ensure surface water drainage is preserved.

Factor: 0

Restatement 000232 1

Shipping and Hauling Activities - General
A number of commentors made comments on the hauling operations. One commentor requested that recyclable commodities that might be hauled be identified. (Volume VI, page C-75). Another commentor noted that backups at the mines could occur if additional tipples and separate access for DM&E were not constructed.

One commentor requested a list of businesses would utilize the DM&E line for shipping. One commentor asked if the Applicant had agreements with connecting carriers to move coal to target areas. One commentor stated that the EIS should analyze DM&E's capacity to provide regional shipping service for small users, and that the business plan should be scrutinized for variables of capacity and intent. One commentor requested the names of the five other rail carriers mentioned on page 1-19 and information pertaining to their agreements with DM&E.

Two commentors noted that ES-48 referred to the products to be shipped annually, and requested the amount of products to be shipped from the northern Black Hills and Rapid City where there are no provisions for upgrade. The same commentor requested information on the financial impacts of shippers should the Rapid City Bypass be implemented. Another commentor stated that 37 trains of 110 cars that carry coal cannot carry significant amounts of grain. The commentor requested the DEIS include the train schedule for carrying grain and the amount of grain to be hauled.

A commentor stated that the DEIS contained no information on passenger service, and requested detailed information in the DEIS.

One commentor asked if Tribes be offered increased shipping capacity and how the expanded capacity would benefit tribes.

One commentor requested that the Board require DM&E to ensure that MN shippers are provided service at or above current levels and fair and reasonable rates. 7557/36

Response

The principal commodity to be hauled over the new rail line extension is coal. The Applicant has identified six core markets available for shipping coal. Shippers desiring rail access could ship other commodities, including recyclable commodities, over the new rail line.

SEA believes that while backups are a possibility, no such delays are anticipated at the coal mines identified in the Draft EIS -- Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

The Applicant identified to SEA six core coal-burning power markets, two additional markets, and a group of utilities with market expansion opportunities. While no commitment of funds has been made to date, the Board determined that this should not preclude the Applicant from taking the project forward. The Board also found that the existing DM&E shippers' rail service should be preserved and improved through implementation of the project. The Applicant has identified three primary interchange points with other railroads: (1) UP at Mankato, (2) I&M Rail Link at Owatonna, and (3) UP, CP, and I&M at Winona/Minnesota City.

The reference to five rail carriers on page 1-19 appears to be incorrect. Presently, DM&E has eastern connections with UP (at Winona, MN) and CP (at Minnesota, MN). DM&E is proposing a connection with the I&M link (at Owatonna, MN). In addition, the Applicant anticipates additional interchanges with joint-line partners for coal traffic.

The Surface Transportation Board, in their decision of December 12, 1998, indicated that the proposed project should bring about a lower cost structure, faster and more reliable service, and additional capacity. The project would also improve service for existing customers. This EIS did not analyze products other than coal that would be shipped by the Applicant.

In the application submitted to the Board, the Applicant indicated that the primary commodity to be shipped is coal. Any discussion about potential passenger rail service or usage rights to allow such a service is speculative and is outside of the scope of this document.

Specific agreements are not a part of the analysis of this EIS. Existing shippers' rail service is expected to be preserved or improved. As an additional competitor in the marketplace, the Applicant would be available to respond to an increased demands for services, potentially bringing to bear a lowered cost structure.

Factor: 0

Restatement 001514 1

Brookings Bypass

A number of commenters provided statements on the proposed Brookings Bypass. The City of Brookings commented that the Board should impose mitigation on DM&E in the form of a shortened bypass that would have less impact than the proposed 14.5-mile bypass. One commenter stated that the Brookings Bypass would cost more than the cost presented in the Draft EIS, especially since the tracks through the city would require upgrade. Another commenter stated that there was no alternative to the Brookings Bypass, especially if the citizens were required to pay for it. One commenter stated that the topographic inputs of the bypass alternatives were understated as shown in the Brookings area. The City of Brookings requested that the Board make a contingency order to provide mitigation without the \$4 million City contribution for upgrades.

Response

SEA evaluated the potential environmental impacts of the alternative routes through the Brookings area and determined that Alternative C is the environmentally preferred alternative.

Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

A detailed description of the Brookings alternatives is found in Chapter 6 of the Final EIS. Specific impacts from the Brookings Bypass alternative are described on a resource-by-resource basis.

Factor:

0

Restatement

001377

3

Train Traffic Projections

A number of commenters questioned the projected operations figures. One commenter stated that the upgrade would eventually carry 75 trains per day. Another commenter noted that a DM&E official indicated that 20 to 30 trains per day would be a realistic expectation. One commenter stated that Appendix G indicated that pre and post-construction train counts were the same, indicating that post-construction train counts did not capture all of the existing train traffic and future train traffic in the analysis. In analyzing alternative train lengths, in Appendix G, the Draft EIS should have also used train numbers that reflect the capacity needed to ship the product. One commenter requested information on the Board's authority to dictate the movement of trains. A commenter noted that existing BNSF and UP coal trains currently operate at 50 to 60 mph in open country, but that DM&E is proposed to operate at much slower speeds. One commenter stated that train weights were undervalued in the Draft EIS based on the 318,000 pound cars described in the application. One commenter stated that the Draft EIS described train lengths of one mile or 135 cars, but that the Draft EIS did not examine foreseeable lengths of two-and-a-half miles which occur today. One commenter requested the location of the locomotive and car maintenance facilities referenced on page 1-30.

Response

DM&E provided train operations information (train counts, length, & speeds) in the Draft EIS. The train counts and train lengths used in the analysis represent an average number of trains per day in operation. The actual number of trains and lengths DM&E operates on a daily basis will most likely vary (Initial operations will employ 286,000-lb. cars operating in 115-135 cars consists). Maximum operating speed on the main line would be 45 mph for loaded coal trains and 49 mph for other trains. Passing sidings will be designed to allow entry at main line speeds of 45 mph. Speeds on the sidings will be reduced from the main line speeds.

The location of rail yards is discussed in section 2.2.7 of the Draft EIS. Due to the numerous considerations for rail yard locations -- including transit times, location relative to communities and towns, land use and environmental constraints, location of existing yards, and topography -- few alternative sites for yards were available. The locations of the rail yards that were evaluated are provided in Table 2-5 of the Draft EIS. The Applicant proposes five new yards and the upgrade of existing yards as part of this project. The Applicant also proposes the construction of a new locomotive and rail car maintenance and repair facility at the Central Yard.

Chapter 4 of this Final EIS discusses the potential environmental impacts of new rail yard facilities.

Factor:

0

Restatement

007533

5

A number of commenters provided statements regarding the I&M interchange. One commenter stated that the Draft EIS did not analyze plans and arrangements between DM&E and IMRL, agreements on signaling, coordination of operations, the number of coal trains to be interchanged with the IMRL, and where trains would stop to interchange. Many commenters stated that the Draft EIS should analyze the effects of DM&E traffic going north on the IMRL and the impacts of rural communities along the I&M route. One commenter stated that the Board should mandate protections as overpasses.

Several commenters stated that in the Draft EIS SEA did not forecast or assess the potential increase in rail traffic in Austin from the routing of train traffic onto the I&M link. One commenter noted that the poor condition of the I&M Rail Link was not conducive to safe transport of coal trains, and that increased traffic would cause congestion in the City of Austin.

Response

SEA received a number of comments about possible connections to the I&M rail link. DM&E has indicated that where feasible, all rail crossings would be grade-separated. It plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Minnesota City have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points, however, the Board had previously determined that the lack of a signed agreement was not a reason for disapproval of the transportation-related aspects of the project (Appendix A, Draft EIS).

If the project is approved, the Board will ensure the interchange of cars with connecting carriers when reasonable agreements cannot be reached. However, potential future rail traffic on the I&M line, and impacts to communities served by the IMRL, was determined to be speculative and not within the scope of the EIS. For a more thorough discussion of the I&M rail link in Owatonna, please refer to Chapter 8 of this Final EIS.

Factor: 0

Restatement 002402 2

Fall County

Fall County commented that they would like the flexibility to change the formula provided by the Applicant for identifying crossings for upgrade.

Response

SEA reviewed the comments regarding grade separations in Fall River County. SEA determined that grade separations are not warranted for this area. SEA completed a thorough evaluation of the potential impacts to Fall River County and determined that the crossings would not meet SEA's criteria for grade separations.

Factor: 0

Restatement 000404 32

One commenter was concerned that sufficient rail service already existed from the PRB mines and that DM&E was not needed.

Response

SEA indicated in Chapter 1, Purpose and Need, of the Draft EIS that the proposed DM&E project would have the advantage of being a straighter, shorter, and more direct rail line between teh PRB mines and DM&E's target utility market area than the current rail carriers. These savings would result in lower transportation and utility costs.

Factor: 0

Restatement 000512 2

One commenter is concerned that the proposed staging area will cause a hardship because of the closure of one access road south on Shag Road. This will result in only one ingress/egress point on Shag Road, serving a population of over 100.

Response

SEA received comments from citizens concerned with access in the Shag Road area. The Applicant will consult with the state Departments of Transportation, in Minnesota, South Dakota, and Wyoming, and local road authorities in the affected counties or townships to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals. To ensure the safe movement of vehicles near the rail line, DM&E will construct roadway approaches and rail line crossings for both new and existing grade crossings according to the standards of the American Association of State Highway and Transportation Officials (AASHTO) design manual. DM&E will also follow applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: 0

Restatement 000513 2

Cambria
One commenter asked of an overpass would be built for the town of Cambria.

Response

SEA reviewed the comments regarding grade separations in Cambria. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts to highways and roads and determined that crossings in Cambria would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS provides SEA's proposed mitigation for transportation impacts.

Factor: 0

Restatement 001094 2

Winona
One commenter stated that Goodview and Winona should be considered in the DEIS for increased traffic impacts related to the project. The City of Winona requested an east (Louisa Street) and west end (Pelzer Street) overpass along with a crossing in the central city with DM&E paying all costs related to the three proposed grade separations.

Response

SEA reviewed the comments regarding grade separations in Goodview and Winona. SEA determined that grade separations are not warranted for these communities. SEA completed a thorough evaluation of the potential impacts to Louisa Street and Pelzer Street and determined that the crossing would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's proposed transportation mitigation measures.

Factor: 0

Restatement 000538 1

New Ulm
A number of commenters from the New Ulm area focused on the proposed staging yard on Shag Road. Commenters opposed the location of the yard on Shag Road. One commenter suggested that the yard might be better placed in Mankato to better serve the two rail companies. Another commenter suggested areas further east and fronting Judson, Minnesota as possible locations with fewer environmental impacts.

Response

SEA is aware of the concerns associated with the placement of the staging yard in close proximity to Shag Road. Chapter 4 of this EIS provides information and analysis related to SEA's recommendation for the siting of the yard. In order to provide access for the safe movement of farm equipment DM&E shall provide or develop appropriate alternative access to fields and pastures. Alternatives for access could include development of frontage roads adjacent to yard boundaries, agreements for farmers to coordinate with the yard master to cross through the yard if rail operations and safety conditions permit, or development of additional access roads.

Factor: 0

Restatement 001094 4

Steele County

Several commenters stated that the DEIS failed to address the effects of increased traffic on the I&M Interchange track in Steele County, and for communities such as Medford, Clinton Falls, Pratt, Bixby, and Blooming Prairie.

One commenter stated that sidings in Steele County should be sited to minimize grade crossings, and that mainline and sidings should be signaled to permit waiting trains to be stopped clear of all grade crossings.

Response

As part of the environmental review for the Draft EIS, SEA discussed consideration of potential environmental impacts over the I&M Rail Link and other rail lines that could receive some of the coal traffic resulting from the proposed project. Because DM&E has not signed any contracts for delivering coal to specific customers, SEA could not determine specific rail routes that would be used to move coal from the DM&E rail system to customers. SEA determined that the specific impacts on these rail lines could not be determined because the analysis would be based on speculation of rail routes to potential customers. As a result, in the Draft EIS, SEA identified that there could be rail traffic interchanged with other carriers at various locations, but that the specific traffic volumes cannot be accurately predicted or analyzed.

SEA has responded to concerns for sidings construction by including mitigation measures to minimize impact. Prior to construction, the Applicant will consult with the Minnesota Department of Transportation and local road authorities to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. In Appendix I of this Final EIS, SEA includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known.

Factor: 0

Restatement 001339 4

Rochester Rail Planning and Engineering

One commenter noted that the engineering report about the Salem Creek Bridge showed a distance of 94 feet between existing elevation and design elevation for a bridge that runs only 28 feet above the creek bed. The commenter stated that the cost estimates do not appear to be correct.

Response

The comment is in reference to a previous commenters' discussion of engineering issues. No cost estimates for bridgework were included in the Draft EIS. No estimates are included in the Final EIS.

Factor: 0

Restatement 000234 10

One commenter was concerned that the DM&E crossing of Interstate 90 was not described in the Draft EIS. One commenter stated that DM&E should establish grade separations at Broadway Avenue (underpass) East Circle Drive (overpass), and West Silver Lake Drive/2nd Avenue NE (underpass) in Rochester.

Response

Chapter 9 of the Final EIS describes in detail the impacts associated with the proposed alternatives in Rochester and SEA's recommendations. Chapter 12 details the mitigation planned for the City of Rochester. As Chapter 12 of the Final EIS describes, the Applicant shall install two grade-separated crossings in Rochester, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. The Applicant shall complete installation of one grade-separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. Applicant shall complete installation of a second grade-separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year.

Factor: 0

Restatement 000404 10

South Dakota

Proposed sidings in South Dakota drew a number of comments. One commenter requested that the EIS identify all the sidings and property requirements and the eminent domain laws relative to sidings. The commenter noted that siding #52 in Volume I, Table 2-6 was listed as 15.3 miles long. The same commenter noted that the milepost markers for Alternative D (Volume I, Table 2-8) jumped from 36.0 to 675.84 between sidings 49 and 50. The commenter stated that the location of sidings, especially the Oral Segment, from description on page 2-77, Table 2-7 for Alternative C, was unclear, and that the "no *" was not explained.

Response

SEA recognizes that sidings are an integral part of the proposed project. Siding construction will occur within DM&E's existing right-of-way or right-of-way acquired for construction purposes. DM&E's Plan includes 35-40 passing sidings with each at least 3 miles long. In Appendix I of this Final EIS, SEA includes a summarized chart of milepost locations and proposed sidings under each Extension Alternative. Although the siding locations have not been finalized, there is flexibility in the determining the location of the sidings. The final location will be determined as property acquisition, engineering considerations, and potential environmental impacts, including wetlands and topographical considerations, are made known. No eminent domain activities are anticipated. Of the Hay Canyon Alternatives, the WG Divide Alternative is identified as the preferred alternative. The Oral Segment and the Hay Canyon Segment are not part of the Final EIS. The asterisk (*) in Table 2-7 referred to the sidings on the Phiney Flats/WG divide Alternative.

Factor:

Restatement 000404 43

Construction
Cuts and Fills

Many commenters provided comments on the construction activities related to the project.

General comments asked for a description of the construction impacts of cutting and filling, blasting, and impacts to adjacent landowners, such as property intrusion, compensation, economic consequences, and mineral rights. One commenter expressed concern that the long dirt embankments required for elevated structures would be environmentally damaging. One commenter requested the cut and fill numbers for the Cheyenne River crossing. Another commenter noted that construction of Alternative C might require bank stabilization channelization authorizations from the Corps of Engineers on the Cheyenne River in order to protect the rail bed.

One commenter stated that all demolition debris must be removed in accordance with local, state, and federal requirements.

Response

SEA acknowledges the concerns about potential impacts from cut and fill activities. The proposed Alternative C, as indicated in the Draft EIS, would cross 14 perennial streams and 520 intermittent streams, including 3 crossings over the Cheyenne River in South Dakota. In Wyoming, Alternative C would be within 500 feet of the Cheyenne River and its perennial tributaries. Changes to the local topography could occur as a result of cut and fill activities during construction.

As detailed in Chapter 12 - Mitigation of this Final EIS, DM&E will obtain all Federal permits, including the necessary Clean Water Act, Section 404 permits required by the U.S. Army Corps of Engineers, for project-related alteration of wetlands, ponds, lakes, streams, or rivers. This includes obtaining a National Pollutant Discharge Elimination System (NPDES) permit from each state (including South Dakota) affected by project-related construction or reconstruction activities.

To minimize sedimentation into streams and waterways, SEA is requiring that DM&E use best management practices, such as silt screens and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during project-related construction and reconstruction activities.

SEA is also requiring that DM&E conduct project-related construction activities in stream beds, such as culvert and bridge work, during low flow or periods when the stream is dry, where practicable. Any project-related construction activities near streams will require the construction of temporary stream crossings as close to a right angle with the stream as possible, and the design of temporary bridges to span across the ordinary high water elevations of waterways to the extent practical. Final design of cut and fill activities near the Cheyenne River, where there is a wider than average right-of-way, will be used to minimize impacts to surface waters.

Factor: 0

Restatement 006315 8

Operations

A number of commenters expressed support for the project as it relates to DM&E operations. Commenters stated that the project would: provide upgrades and improvements to the operations; increase service to farmers; carry passengers; open new markets; lower shipping costs by rail and barge; alleviate rail capacity shortages and rail service failures; reduce truck wear on highways; and increase hauling efficiencies nationally.

Similar

A number of commenters expressed concern over current DM&E operations. One commenter stated that the efficiency and reliability of operations should be explained since the rail would be single-tracked for 1000 miles. One commenter stated that DM&E rural crossings are in disrepair and have not been maintained, and that there has been poor fencing and fire control.

One commenter stated that the Draft EIS did not specify how the coal reached its final destination and did not analyze impacts to small communities along the route. One commenter stated that the Draft EIS should address operational impacts and mitigation measures rather than a focus on construction impacts.

Response

SEA acknowledges the support for the proposed action. The purpose and need for the proposed project is presented in Sections 1.2 and 1.3 of the Draft EIS and in Chapter 2 of the Final EIS.

SEA agrees that the DM&E rail line requires upgrades to both the present rail conditions and for operations. Improvements to the train operations are part of the proposed action. The Board decision of December 1998 stated that the current record indicates that DM&E's signal and control system would ensure that trains meet only where there is a siding. The Applicant will make use of a computer model that allows for flexibility in the location of sidings. The Applicant has indicated to the Board that it plans for trains to move across the system in set time slots rather than being dispatched at odd intervals. The use of this slot system should keep trains moving evenly across the main track and also spread the traffic among the staging and marshalling yards across the system so that line can have ample capacity at these facilities.

The Draft EIS noted the existing condition of the rail line and the safety concerns and service reliability problems associated with continued operations (Section 1.3.1). Existing conditions detailed in the Draft EIS indicate a line in poor condition.

The modes by which the coal reaches its final destination were not analyzed as part of this EIS because there are presently no signed agreements with connecting carriers at the rail interchange points. Appendix A of the Draft EIS presents the Applicant's forecasted market shares and six core markets that are potential end-users of PRB coal. The Board has ruled that these forecasts and markets are reasonable.

Factor:

0

Restatement 007559 63

Mankato Mitigation

The City of Mankato requested a number of items for project mitigation, including: DM&E responsibility for the adequate drainage of the rail bed; the appointment of a DM&E community liaison to interact with the city of Mankato and property owners during construction and mitigation implementation; property acquisition; pedestrian bridges; gated crossings; access roads; overpasses; trestles; sound wall construction; home and business retrofit; fencing; landscaping; trail elevation; and floodwall mitigation at a cost of \$34.8 million.

Response

SEA received proposed mitigation from numerous jurisdictions in the project area, including Mankato, MN. The specific mitigation measures proposed by SEA are found in Chapter 12 of this Final EIS. The proposed alternative, M2, would not go through the City of Mankato thus alleviating the need for much of the mitigation called for in the comments. Chapter 7 of this Final EIS describes a comparison of impacts to the Mankato area.

11/15/2001

Similar
0

Factor:

Restatement 004576 2

Eagle Lake

A number of commenters opposed the proposed East Staging and Marshalling Yard location under Alternative D. Other commentors requested clarification of the proposed impacts of the yard in this location. One commenter asked how long it would take an eastbound train to build up speed after leaving the yard. Still other commenters asked about the delays at intersections, the average delay time, and if county Roads 56, Third Street, Second Street, Agency Street, County Road 17, or access to Highway 14 would be impacted.

Response

The preferred alternative, Alternative C, as described in Chapter 3 would not include the East Staging and Marshalling Yard as described for Alternative D. The recommended site for the East Staging Yard, and a discussion of potential environmental impacts, are found in Chapter 4 of this Final EIS.

Factor: 0

Restatement 006454 25

Wall

One commentator stated that the alignment of the proposed route near Wall, SD would interfere with the proposed runway expansion at the Wall airport.

Response

SEA has considered the proposed improvements to the Wall airport. These findings are discussed in Chapter 4 of this Final EIS. No adverse impacts from the project are expected on the Wall airport.

Factor: 0

Restatement 007557 28

One commenter stated that the significant train increase warrants the Board ordering DM&E to pay for all costs associated with the construction of grade separations in Rochester. The Rochester Bypass alternative with 34 at-grade crossings must identify road closures, safety improvements, and grade separations.

Response

The Board has developed a level of grade crossing protection by the Applicant, who will be responsible for 90% of the cost of the protection on the existing rail line through Rochester.

In response to the comment about the Rochester Bypass Alternative, SEA has determined that the existing line through Rochester (R-2), with appropriate mitigation, is the environmentally preferred alternative.

Factor:

Restatement 007855 2

DM&E has not contacted the State about potential impacts to county roads.

Response

SEA recognizes the importance of coordination with local and state highway planners and engineers. As part of the proposed mitigation measures outlined in Chapter 12 of this Final EIS, DM&E will consult with the state Department of Transportation in Wyoming, as well as local and county road authorities to ensure that new construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

Topic: **T14-Safety**
SubTopic: T14B-Grade crossing
Factor: F01F-Alternatives - Brookings Bypass

27

Restatement 006313 8

A number of commenters expressed general concerns for school bus safety at railroad crossings in Rochester, Stewartville, Byron, Dover, Eyota, Hayfield, Kasson-Mantorville, and Olmsted County. One commenter stated that grade separations are appropriate where exposure exceeds 200,000 vehicles per day and that 7 grade separations are warranted in Rochester and one grade separation in Byron. One commenter stated that the Rochester bypass would increase school bus exposures for the Rochester, Byron, Stewartville, Hayfield, and the Dover/Eyota schools.

Mankato

One commenter stated that Mankato school buses cross railroad tracks 69 times a day, and that increased crossings would be unsafe.

Response

Many of the concerns expressed for rural crossings around Rochester will not be realized under SEA's environmentally preferred alternative. The preferred alternative does not include the proposed Rochester Bypass. In response to grade crossing concerns in the City of Rochester, SEA has proposed mitigation in the form of two grade-separated crossings of the rail line. These are detailed in Chapter 12 of the Final EIS. In response to concerns for school bus safety in Mankato and other parts of the study area, DM&E will consult and coordinate with school districts about permitting the placement of school bus in-vehicle warning devices on railroad property. DM&E and the communities of Byron, Dover, Eyota and Kasson have reached an agreement covering all potential impacts of the proposed project. Copies of those negotiated agreements may be found in Appendix E of the Final EIS.

Factor: F02D-Analysis - Mitigation

20

Restatement 000404 84

Mitigation

Costs

One commenter requested information on the cost responsibility of improvements. The commenter stated that cost obligations were unclear where local or state authorities

deemed that an intersection should be grade separated but the STB had not required the improvement. The commenter believed that if taxpayers were responsible, then a socioeconomic analysis should be prepared. 404/84 One commenter stated that it is the responsibility of DM&E to pay for the recommendations made by local transportation authorities. The commenter requested more specifics on mitigation. If mitigation is funded by taxpayers, the EIS should analyze the socioeconomic impacts of this mitigation.

Systems

One commenter suggested the implementation of an In-Vehicle Warning Systems. The commenter noted that DME would need to provide property access for installation. One commenter suggested that trains have better lighting and reflective tape on the sides of cars.

Operations

General

One commenter stated that the EIS should discuss the implementation of mitigation measures where DM&E would allow access to their right-of-way for the installation of train detection technology for use by school buses and emergency response vehicles. One commenter stated that the Draft EIS did not adequately address grade crossing safety and that gate arms and active warning devices be installed at all grade crossings.

Response

SEA realizes that mitigation costs can be significant. Because of the significant impact of DM&E's project in cities like Rochester, MN, and Pierre, SD, the Board believes that DM&E's share of the cost for design and construction of the grade separation should be a minimum of 50 percent. This is substantially more than the traditional railroad share for similar projects. Other mitigation measures recommended in Chapter 12 of the Final EIS would be DM&E's responsibility. Site specific mitigation activities are also provided in Chapters 4 through 9 of this Final EIS.

SEA recognizes the concerns related to school bus safety and visibility of trains. SEA recommends that DM&E consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses. Recommended mitigation measures, as outlined in Chapter 12 of this Final EIS, will assist pedestrians and drivers to see trains. SEA recommends that DM&E install reflective material on the back side of all passive crossing warning devices, such as crossbucks, on the new and existing rail line.

SEA agrees that school bus safety is an important issue. SEA recommends that DM&E consult and coordinate with school districts regarding the potential placement on railroad property of equipment to permit the use of in-vehicle warning devices on school buses.

As detailed in Chapter 12 of the Final EIS, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: F02A-Analysis - Data Accuracy

0

Restatement

007567

55

While the upgrade of the tracks is seen as a benefit, it should be noted that many of the DM&E accidents and safety problems were unrelated to track. Included in the

operational problems are operating practice problems, power and equipment problems, mishandling of hazardous materials, and defects in signals.

Response

SEA acknowledges the safety concerns expressed by the commenter. Chapter 1 of the Draft EIS acknowledged problems with the train signaling system, lights and gates at intersections, and right-of-way protection. These and other safety concerns are to be addressed by DM&E. In Chapter 12 of this Final EIS, SEA provides detailed descriptions of the proposed mitigation measures related to safety improvements.

Factor: F02E-Analysis - Results 2

Restatement 006448 5

A number of commenters remarked on safety concerns related to school bus routes in the rural 700-square mile Edgemont School District. There is a concern that existing crossings are unsafe and not maintained by the railroad. One commenter stated that 6 - 7 new crossings are planned; one gated, one with lights, and the rest with passive warning devices, and that based on accident analysis there will be 1 accident every 5 years which is an unacceptable.

Response

SEA acknowledges the concerns regarding school bus safety in rural areas. The proposed project includes safer grade crossings and improved maintenance of the line. DM&E proposes to consult with the South Dakota Department of Transportation to consider if the grade separation proposed in the Grade Crossing Mitigation Plan of US Highway 18 east of Edgemont, South Dakota can be designed to accommodate future expansion of this highway to four lanes. In addition, DM&E will consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses.

Factor: F02D-Analysis - Mitigation 4

Restatement 006451 4

Safety mitigation should be included for the towns of Goodview and Winona.

Response

SEA recognizes concerns related to pedestrian access and crossings in Winona and other areas in the project area. Recommended mitigation measures, as outlined in Chapter 12 of this Final EIS, will assist pedestrians in the safe crossing of the rail line. SEA recommends that DM&E will install reflective material on the back side of all passive crossing warning devices, such as crossbucks, on the new and existing rail line. In addition, SEA recommends DM&E will properly maintain its new and existing rail line. Maintenance will include trimming vegetation on railroad property that can obscure visibility of oncoming trains.

Also, SEA recommends that DM&E will install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence will be installed along all rail line right-of-way adjacent to residential property. SEA recommends that the Applicant shall consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design.

Factor: F02D-Analysis - Mitigation 15

Restatement 007708 4

Minnesota

One commenter noted that the Board should require proper warnings at all grade crossings, following the requirements set forth in the Southern Minnesota Rail Corridor Safety

11/15/2001

Similar

Plan of February 2000.

One commenter stated that the Board should require adequate sight lines at all grade crossings. The same commenter stated that flashing lights and gates should be required on all major roads crossed by the highway including County State Aid Highway (CSAH) 16, CSAH 59, CSAH 71, CSAH 19, 75, 17, and 18. These crossings should be kept open. The commenter noted that there should be lights and gates at grade crossings for all sidings in Steele County.

Steele County commented that they require mitigation for the Rochester Bypass, including adequate sight lines on grade crossings, proper grade warnings for grade crossings, lights and gates on all major and county roads and the two proposed sidings, and maintained or improved clearances in substandard bridges.

Mankato

Mankato Township commented that crossings should minimally have four-gate and center median protection systems, that all major roads be grade separated, and that additional safety protections be developed for limited sight visibility due to crops and removed snow.

Olmsted County

One commenter suggested that all 12 grade crossings between Olmsted County Highway 22 West and Olmsted County Highway 22 East be equipped with gates with sensors with horns that allow for whistle-free crossings.

Brookings

One commenter suggested that mitigation in Brookings for the B-2 Alternative consist of eliminating two of the pedestrian crossings and the use of warning devices on the remaining crossing.

Winona

One commenter expressed concern for the lack of proposed mitigation for the two at-grade crossings at Winona State University.

Response

SEA agrees and does require proper warnings at grade crossings. SEA's proposed mitigation in Chapter 12 of the Final EIS recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections, and that the implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA evaluated the potential environmental impacts of the alternative routes through Steele County and determined that the R-2 Alternative is the environmentally preferred alternative. Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

SEA agrees with the concerns expressed for crossings in Mankato, and SEA's recommended mitigation in ch. 12 of the Final EIS would require DM&E to install proper warnings at grade crossings, and consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. SEA recommends that implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation, and DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA reviewed the comments regarding grade separations in Mankato. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts and determined that the suggested Mankato crossings would not meet SEA's criteria for grade separations. See Chapter 7 of this Final EIS. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

SEA acknowledges the concern for crossings in Olmsted County. As previously discussed, SEA's recommended mitigation in Ch. 12 of the Final EIS would require DM&E to consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. SEA also recommended that the implementation of all grade crossing protections should be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation, and that should DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA also recommends that DM&E should consult with interested communities along its new and existing rail line to identify alternative safety measures to eliminate the need to sound train horns in the community, in accordance with Federal Railroad Administration's final rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings.

For Brookings, at the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, SEA recommends that DM&E install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

Although no grade separations were identified for the City of Winona, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections, and that the implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. SEA recommends that DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: F02D-Analysis - Mitigation

2

Restatement 007554 39

One commenter expressed concern that the Draft EIS suggested that emergency response vehicles could use oncoming lanes of traffic at intersections to gain time in response to emergencies. Another commenter expressed concern that "whistle-free" intersections might require that intersections be gated for longer periods causing delays greater than those described in the Draft EIS.

Response

SEA recognizes the merits of both these mitigation comments. At this time there are no existing FRA regulations that allow for quiet zones. Horns must be activated at all at-grade crossings. At such time when the FRA provides for regulations for whistle-free or quiet zones, then agreements between the railroads and communities may be negotiated. These agreements are subject to the approval of the FRA. Safety measures in quiet zones may vary from location to location. DM&E will consult with interested communities along its new and existing rail line to identify alternative safety measures to eliminate the need to sound train horns in the community. These will be carried out in accordance with Federal Railroad Administration's final rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings. SEA also proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone.

Factor: F01G-Alternatives - Rochester Bypass

Restatement 007556 25

One commenter presented analysis that the Rochester police will be delayed once every 4.1 hours, ambulances delayed once every 32.8 hours, and fire fighters delayed once every 89.4 hours. The commenter requested that these facts be included in the Final EIS.

Response

Emergency events are random in nature and SEA has not identified objective methodology to determine the amount of time or frequency that emergency vehicles are delayed.

SEA recognizes the emergency response concerns of local residents in communities served by the rail line. In response to the concerns for safe access and full emergency **Response**, SEA proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone. In addition, DM&E will install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or other mutually acceptable location.

Also, SEA is recommending that prior to the initiation of project related reconstruction activities in Rochester, Minnesota, that DM&E establish a special Mayo Clinic liaison. The role of the liaison will be to consult with Mayo Clinic officials to facilitate communication between DM&E and the Mayo Clinic. This can include developing cooperative solutions, conducting periodic information briefings to allow the exchange of information between DM&E and the Mayo Clinic, and working to promptly address Mayo Clinic concerns related to the project.

SEA acknowledges the comments pertaining to city-wide evacuations and the possible delays caused by trains to transport people from local facilities. This does not appear to be a credible scenario for evaluation under the proposed action.

Impacts to rural residents are not expected under the R-3 and R-4 bypass alternatives. The preferred alternative is to route the line using the R-2 Alternative through Rochester. An additional discussion of emergency response times and capabilities is found in Chapter 9 of this Final EIS.

Factor: F02E-Analysis - Results

57

Restatement 007556 25

One commenter presented analysis that the Rochester police will be delayed once every 4.1 hours, ambulances delayed once every 32.8 hours, and fire fighters delayed once every 89.4 hours. The commenter requested that these facts be included in the Final EIS.

Response

Emergency events are random in nature and SEA has not identified objective methodology to determine the amount of time or frequency that emergency vehicles are delayed.

SEA recognizes the emergency response concerns of local residents in communities served by the rail line. In response to the concerns for safe access and full emergency **Response**, SEA proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone. In addition, DM&E will install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or other mutually acceptable location.

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SEA acknowledges the comments pertaining to city-wide evacuations and the possible delays caused by trains to transport people from local facilities. This does not appear to be a credible scenario for evaluation under the proposed action.

Impacts to rural residents are not expected under the R-3 and R-4 bypass alternatives. The preferred alternative is to route the line using the R-2 Alternative through Rochester. An additional discussion of emergency response times and capabilities is found in Chapter 9 of this Final EIS.

Factor: F02A-Analysis - Data Accuracy

Restatement 007556 25

One commenter presented analysis that the Rochester police will be delayed once every 4.1 hours, ambulances delayed once every 32.8 hours, and fire fighters delayed once every 89.4 hours. The commenter requested that these facts be included in the Final EIS.

Response

Emergency events are random in nature and SEA has not identified objective methodology to determine the amount of time or frequency that emergency vehicles are delayed.

SEA recognizes the emergency response concerns of local residents in communities served by the rail line. In response to the concerns for safe access and full emergency Response, SEA proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone. In addition, DM&E will install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or other mutually acceptable location.

Also, SEA is recommending that prior to the initiation of project related reconstruction activities in Rochester, Minnesota, that DM&E establish a special Mayo Clinic liaison. The role of the liaison will be to consult with Mayo Clinic officials to facilitate communication between DM&E and the Mayo Clinic. This can include developing cooperative solutions, conducting periodic information briefings to allow the exchange of information between DM&E and the Mayo Clinic, and working to promptly address Mayo Clinic concerns related to the project.

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11/15/2001

Similar

Factor: F02D-Analysis - Mitigation

2

Restatement 007546 252

One commenter stated that the Draft EIS makes no recommendations for trespass restraints, such as chain-link fencing, in urbanized areas in order to prevent pedestrian accidents.

Response

Ch. 12 of this Final EIS describes SEA's recommended mitigation. SEA has recommended that DM&E install permanent fencing, where appropriate, along the new and existing rail line. If practicable SEA recommends that, in incorporated areas, an 8-foot high chain link fence shall be installed along all rail line right-of-way adjacent to residential property, and that DM&E will consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design

Factor: F02D-Analysis - Mitigation

10

Restatement 007546 256

Two commenters specifically requested that the Applicant consult with the communities of Mankato, Rochester, and Winona on the possible installation of a real-time train detection and monitoring system. The commenters stated that the Board should require the Applicant to provide access for installation if the system is warranted. One commenter stated that a computer monitoring system would be inadequate for assisting emergency vehicles. One commenter suggested the implementation of a global positioning system for Winona County in order to track the movement of trains for emergency response vehicles.

Response

SEA recognizes the potential need for train detection systems. Ch. 12 of this Final EIS describes SEA's recommended mitigation. As part of the mitigation, SEA is recommending that DM&E consult with communities requesting the possible installation of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. Such a system could help identify train movements for emergency response centers, showing the location of trains and/or the position of grade crossing warning signals.

Factor: F01G-Alternatives - Rochester Bypass

6

Restatement 007546 266

One commenter stated that school bus crossing calculations should have included parents who drive their children to school. A commenter stated that the Draft EIS did not address impacts to school bus schedules. One commenter noted that the Draft EIS includes no discussion of hazards faced by school bus drivers. The commenter referenced an NTSB Study (no title provided) indicating interior bus noise can mask the sound of train horns.

One commenter was concerned that rural crossings would not be gated and would result in dangerous crossings for school buses.

Response

SEA recognizes the concerns expressed for school bus safety associated with the proposed project. In response to these concerns, Ch. 12 of this Final EIS describes SEA's recommended mitigation, which includes recommending that DM&E consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses.

Additionally, SEA recommends that DM&E construct or reconstruct roadway approaches and rail line crossings for both new and existing grade crossings according to professional and accepted standards. These standards include the American Association of State Highway and Transportation Officials (AASHTO) design manual, applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: F02E-Analysis - Results

1

Restatement 000404 22

Results

One commenter stated that the sheer increase from 1 to 37 trains a week will not improve grade crossing protection at any intersection. Another commenter noted that on page ES-20 it states that rail line crossings would provide opportunities for vehicle/train accidents seems at odds with statements that the project would have a safety benefit.

One commenter noted that in Volume 1, page 2-30, the EIS states that there is no significant impact for Alternative C, yet there are significant impacts for Alternative B. However, the Draft EIS states that Alternatives B and C are essentially the same. The commenter would like to see a side by side comparison of safety impacts for these alternatives.

Response

SEA understands the concerns of local residents that will experience increased train volumes along the proposed route. However, a key component of the proposed action is the upgrade of the existing line as well as improvements to the ancillary components of the DM&E operations, including signage, fencing, maintenance activities, and train control systems. Many of these upgrades are specified in Chapter 12 - Mitigation for the Final EIS. Based on public comment and additional analysis, SEA determined that Alternative C, with appropriate mitigation, is the environmentally preferred alternative. The specific elements of the preferred alternative, Alternative C, including safety issues are detailed in Chapter 3 of this Final EIS.

Factor: F04A-Project - Support

0

Restatement 002327 2

General

A number of commenters stated that the project would bring improvements to grade crossings with better-marked crossings and reduce the potential for accidents.

A number of commenters expressed concern that the project would increase the potential for fatal accidents at crossings. One commenter noted that unprotected crossings would be dangerous. One commenter noted that rural crossings pose a substantially greater risk of accidents than urban crossings as seen in records published by the MN Dept. of Public Safety.

Response

SEA agrees that project implementation would bring about safer and more reliable rail service, as stated in the Purpose and Need for the project in Section 1.3.1 of the Draft EIS. Safer intersections and a reduction in the potential for accidents are goals of the proposed project.

SEA acknowledges that the proposed project would result in an increase in the number of trains on the DM&E line. However, DM&E has indicated that it would fund major grade crossing and right-of-way protection enhancements, provide an entirely new track infrastructure with new welded rail, and install a state-of-the-art signaling system for train control. These improvements will result in safer railroad operations.

As detailed in Chapter 12 of this Final EIS, DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections.

The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate State Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: F02A-Analysis - Data Accuracy 0

Restatement 003809 15

One commenter stated that the Executive Summary (ES-20) indicated an increased likelihood for pedestrian accidents, while earlier statements in the document referred to safety benefits that would accrue from the project.

One commenter stated that the Draft EIS makes no recommendations for trespass restraints, such as chain-link fencing, in urbanized areas in order to prevent pedestrian accidents.

Response

SEA believes that the proposed project will improve pedestrian safety by improving the conditions of the rail line, the rail right-of-way, and train operations. Safety measures are a critical component of the mitigation measures that SEA is recommending to the Board. These measures are both site-specific and project area applicable.

Factor: F02D-Analysis - Mitigation 22

Restatement 006454 18

South Dakota

The State of South Dakota commented that it expects DM&E to provide the highest level of crossing protection at no cost to the state, and that the State must be part of all agreements with DM&E to determine adequate crossing protection.

One commenter indicated a concern that the entrance road to Farm Island State Recreation Area will become blocked and that traffic will back up onto Highway 34, and that a turn lane must be added on Highway 34.

One commenter noted that grade separations are expensive and that it would be cost effective to install them sooner than later. The commenter also requested that the Board require the Applicant to construct grade separation for all crossings in the Edgemont School District.

One commenter noted that the proposed mitigation allowing for one lane of passage for emergency response vehicles does not take into account the South Dakota Codified Law 49-16A-119. The commenter requested that the phrase "to the extent practicable" be stricken from document.

The State of South Dakota noted that they asked DM&E's Engineer to meet with each county to discuss and agree to protection at each county, but to date this had not been done.

The commenter is concerned that 4 new grade crossings are listed for the Oral Segment, but that the number of existing crossings are not provided in order for the alternatives to be compared.

Response

SEA agrees with the comment that the highest level of protection should be provided that is warranted for an intersection. To this end, DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate State Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA recognizes the need to maintain adequate park access during construction and operations. DM&E will consult with Federal and state land managers including the South Dakota Game, Fish and Parks, to determine locations where project-related construction and reconstruction activities will result in lost or reduced access to public lands due to temporary road closures or other construction related activities. DM&E will develop a plan to provide alternative access to these lands during project-related construction and reconstruction activities and operation of unit coal trains to the extent practicable.

SEA believes that the mitigation proposed in Chapter 12 of this Final EIS will help provide for emergency vehicle operations during project construction and operations. DM&E will coordinate with the appropriate state Departments of Transportation, counties, and affected communities to install temporary notification signs or message boards on railroad property at public grade crossings. The specifics of this program will be determined by the State and/or County that warrants these measures. The signs will clearly advise motorists of the impending increase in train traffic and train speeds along its existing system and commencement of operations along its new rail line.

Factor: F02D-Analysis - Mitigation

4

Restatement

007553

14

A number of commenters suggested safety mitigation for pedestrians in the cities of Winona and Brookings. One commenter stated that Winona should have three pedestrian-grade and bicycle-grade separations; two to serve the Winona State University (at Huff Street and at Main Street) and one to serve the east central area of the city (at Franklin Street). The commenter noted that the University is constructing a 300-bed housing unit near Franklin Street and that residents will need access from the north side to the south side of campus across the rail line. These crossings are estimated to cost \$4.5 M. One commenter stated that the DM&E should pay the full cost of fencing (estimated at \$750,000) and landscaping (estimated at \$1,000,000) to provide safety to the children and other pedestrians in Winona.

A number of comments were received for mitigation in Brookings. One commenter requested the construction of a wall or fence within city limits to create a solid safety barrier between DM&E right-of-way and pedestrians. A commenter also recommended the installation of walkways over the tracks. One commenter expressed concern that for the B-2 alternative two crossings would be eliminated and one crossing would have warning devices installed. The commenter suggested walkways over the tracks.

Response

SEA recognizes the importance of providing safe pedestrian access to communities that are adjacent to or otherwise cross the rail line. Mitigation measures outlined in Chapter 12 of this Final EIS will be implemented to inform area residents about construction and operation activities associated with the proposed project. At least one month prior to initiation of construction activities in the area, DM&E will provide information to each local emergency response organization for communities within the project area regarding project-related construction and operation of both the new and existing rail line. This information will include:

The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

Expected schedule for change in rail line operations along Applicant’s existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

A toll-free number for the DM&E's contact who shall be available to answer questions or attend meetings for the purpose of informing emergency service providers about the project construction and operation.

Revisions to this information, including changes in construction schedule, as appropriate.

DM&E will also consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. DM&E will also discuss the possible installation of an electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system showing the position of trains and/or the position of grade crossing warning signals.

Another mitigation option would be for DM&E to conduct a media campaign throughout the counties and communities surrounding the rail line providing information and notice to the public of project-related changes along its existing system and commencement of operations along its new rail line. This campaign could include the use of different media (radio, television, newspaper, public meetings, etc.) and may include such things as public service announcements, advertisements, or legal notices.

DM&E will properly maintain its new and existing rail line. Maintenance shall include trimming vegetation on railroad property that obscures visibility of oncoming trains and assuring that rail, railroad ties, track fastenings, and ballast material are in good repair, and that warning devices operate properly and are legible.

DM&E will install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence shall be installed along all rail line right-of-way adjacent to residential property. DM&E will consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design

As stated in Chapter 12 of this Final EIS, at the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail in Brookings, South Dakota, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains. Applicant shall report to the Board that they have complied with this condition as part of its quarterly reports required prior to operation of unit coal trains through Brookings.

Factor: F01H-Alternatives - Yards

12

Restatement 003016 11

Many commenters provided comments on specific locations where delays might occur. These locations include:

New Ulm. For Option B the highway and street crossings in New Ulm would be closed for longer periods of time than under Option A. The commenter indicated that this increased closure time should be addressed in the EIS for emergency response.

Eagle Lake. A commenter noted that fire and police departments are on the south side of the tracks and homes and businesses are on the north side. Response times that now average one minute or less could become five to ten minutes (or longer during construction).

Mankato. A commenter noted that the Southern Route would have a negative impact on patrol and response times in the area.

One commenter stated that emergency vehicles would have alternate routes under the M-3 alternative but that the M-2 route had fewer options.

A commenter expressed concern that emergency vehicles would not have access to the Land of Memories Park during the September powwow, and during events of that week. The commenter noted that the at-grade crossing on Bird Avenue is the Park's only access.

Rochester. One commenter indicated that the proposed Bypass would result in emergency vehicles having to navigate difficult roads to access residents. Another commenter noted that the Draft EIS omitted any discussion of emergency Response impacts of Alternatives R-3 and R-4 for residents in rural areas.

Owatonna. One commenter indicated that the intersection of IMRL at School Street and Havana Road would be problematic for emergency vehicles while trains crossed.

City of Fort Pierre. One commenter noted that the rail line separated the City's only fire station from the other half of the city and that residents must have access to the City of Pierre for medical facilities.

Pierre. One commenter noted that there is only grade separation in Pierre -- a narrow secondary street that will have a high concentration of vehicles making emergency access difficult.

City of Brookings. A commenter indicated that grade separations would be needed at key intersections to provide for emergency response.

Winona. One commenter indicated a concern that the south side of the community would not be served by emergency medical and fire vehicles if crossings were blocked.

One commenter indicated that flooding in the City of Austin results in the blockage of east-west access, and that a train blocking 8th avenue, NE would result in serious emergency service delays.

Response

SEA recognizes the potential for project construction and operations to have a disruptive effect on travel patterns. To this end, SEA has recommended mitigation measures to address concerns for emergency response capabilities. At least one month prior to construction, DM&E will provide the following information to each local emergency response organization or other similar body for communities within the project area:

The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

Expected schedule for change in rail line operations along DM&E's existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

A toll-free number for DM&E's contact who will be available to answer questions or attend meetings for the purpose of informing emergency service providers about the project construction and operation.

Revisions to this information, including changes in construction schedule, as appropriate.

DM&E will consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and any other affected communities that so request, to coordinate train movements and emergency response and discuss the possible installation by DM&E of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community showing the location of trains and/or the position of grade crossing warning signals. Additionally, DM&E will minimize trains blocking grade crossings throughout its system.

Winona is not located on DM&E rail line. DM&E trains coming from the east end just north of Winona. The rail line that runs north and south through Winona is owned and operated by CN. SEA evaluates the impacts to Winona as part of the project, however the Board cannot impose mitigation on rail lines owned by other rail companies.

Additional discussions about safety issues in Mankato are found in Chapter 7 of this Final EIS. Specific analysis of safety responsiveness in Rochester is found in Chapter 9 of this Final EIS. A further discussion of impacts in Owatonna is found in Chapter 8 of this Final EIS.

DM&E and the City of New Ulm have reached an agreement covering all aspects of potential rail line impacts. A copy of the negotiated agreement may be found in Appendix E of this Final EIS.

Factor: F02D-Analysis - Mitigation 0

Restatement 007564 11

One commenter stated that perhaps the Applicant should be responsible, in part, for funding an emergency response infrastructure to respond to emergencies related to derailments.

Response

While a response to derailments is not a mitigation measure specified in the Final EIS, SEA agrees that DM&E should consult with requesting communities to implement mitigation measures to enhance the responsiveness of emergency vehicles and personnel. One mitigation measure recommended by SEA is for DM&E to explore with communities the use of a GPS train monitoring system to track train movements. See Chapter 12 of this Final EIS for more details related to the proposed mitigation measures.

Factor: F02C-Analysis - Methods 12

Restatement 001314 1

The only substantive discussion of safety is in the Executive Summary discussion of the No-action alternative. No other independent or other public safety experts were consulted in this report. The statement that further deterioration of safety would take place without project approval is disturbing coming from a railroad company, especially as it relates to past business practices. There was no safety comparison for the Rochester alternatives. Comparisons with rail systems in the US should be made to verify that future expansion will result in safer operations through downtown Rochester.

Response

SEA recognizes the concern expressed for safety of the rail operations. An explicit purpose for the proposed project is the increased safety of the DM&E operations. This will be achieved through, among others, track replacement and upgrade, improved grade crossings, and improved operational features. Specific safety mitigation measures are presented in Chapter 12 of this Final EIS. A discussion of potential rail impacts along the Rochester Alternatives is found in Chapter 9 of the Final EIS.

Factor: F02C-Analysis - Methods

Restatement 000080 1

DRAFT EIS

Methodology

Accident Analysis

One commenter expressed concern that the methodology for calculating accidents in the DEIS is flawed. The commenter noted that the model is not accurate for a doubling of train speeds.

One commenter stated that most at-grade collisions involve train speeds of 35 mph or less, and that one-quarter of the collisions involve the cars going around the gates or unaware of warning signals.

One commenter was concerned with the accident analysis performed for Olmsted County. The commenter noted that an average traffic count of 5000 ADT was not used for crossing analysis, thus removing most roads affected by the project and putting motorists at risk. The commenter was concerned that no grade separations, township roads, closings, or signage were discussed in the safety section. The same commenter stated that the DEIS did not apply the accident rate to Olmsted County to conclude that there will be one accident every 10 years in the county. The DEIS states an accident rate of 1 every 8 years, but does not present the assumptions -- trains, size and speed -- to reach the 1 accident in 8 years.

The commenter stated that flawed assumptions include passive grade crossing utilized at every crossing and paved roads. The commenter felt that MNDOT criteria and applicant proposals that were presented to communities should have been used as the baseline criteria. The commenter believed that the results overstated the accidents that can be expected for Alt R-3/R-4 as compared to R-2 (existing corridor).

The commenter stated that incorrect data used in the analysis included the number of highway lanes and the number of tracks at certain crossings, characterization of the tracks as mainline or local service, and the number of day and night trains. The commenter noted that Appendix H showed an assumption of 2/3 day and 1/3 night trains, effecting the outcome of accident predictions since vehicular traffic distribution and historic accident factors are affected by the day/night distribution.

The commenter stated that the assumptions for accidents should have been equal for all three states and not skewed to the detriment of MN. The commenter believed that the analysis appeared to be a de facto prioritization and not an impact assessment. The commenter believes that a single rate reflective of the 80th percentile accident rate would have been a more defensible criteria to measure accident rate impacts in the project area.

One commenter noted that the Draft EIS specified the number of crossings that must be constructed for R-4 but not the number of crossings to be reconstructed for R-2. The commenter noted that the DEIS states that R-2 would give rise to "significant" increase in accident frequency at one crossing, but that R-4 increases are below criteria for significance. FEIS should note the safety benefits of the grade separations that Rochester proposes for R-4.

One commenter stated that the assumption that TWSC operations are similar in nature to the judgement a motorist exercises at a highway rail crossings was misapplied, noting that judgements are more similar to those exercised at a signalized intersection. The commenter referred to "Traffic Flow Fundamentals" and TRB Special Report 165, and noted that LOS is typically used to measure peak hour traffic impacts. The use of the LOS over a 24-hour period masks the critical conditions observed during critical times (refer to table of data presented). The commenter stated that the criteria for assessing the significance of expected increases in highway-rail crossing accidents treated Minnesota communities differently than South Dakota and Wyoming communities. The commenter believed that the risk of accidents to drivers is not equitably measured across the three states, and that

Similar

the Group A and Group B designations favor the other states over Minnesota. The commenter stated that the applicant should not have used an assumption that all crossings would be protected by passive devices. The commenter noted that there are differences in the MNDOT and the applicant's standards applied to grade crossing protection; MNDOT identified 50% more existing grade crossings that should have lights and gates. The commenter stated that the STB should show support for the standards established by the State of Minnesota for grade crossing protection. The commenter also stated that erroneous input data used in the DEIS for the accident safety analysis included the number of travel lanes on certain roadways, number of mainline tracks, and whether the road is paved or gravel.

One commenter stated that the applicant did not utilize the MNDOT for locating driveway, road, local street and highway crossings.

Response

SEA acknowledges the concerns by Brookings residents for the proposed project. Two specific mitigation measures are proposed for Brookings. If DM&E determines that the bridge over 6th Avenue requires reconstruction to permit movement of unit coal trains, DM&E will coordinate with the City and the South Dakota Department of Transportation to explore design options. A determination will be made whether the bridge can be designed and constructed to ensure safe passage of emergency vehicles.

For the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

SEA reviewed the comments regarding grade separations in Brookings. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts and determined that the Brookings Township crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

Chapter 6 of this Final EIS discusses the impacts associated with the alternatives for the Brookings area, including the Sixmile Creek floodplain and grade crossing safety.

SEA agrees that the Sioux Avenue intersection in Pierre merits mitigation in the form of a grade separated crossing. DM&E will install a grade separated crossing in Pierre, South Dakota, at Sioux Avenue or at an other mutually acceptable location, to be completed within one year of commencement of unit coal train operations through Pierre. DM&E will negotiate with the appropriate state and local transportation authorities, City of Pierre, and Federal Railroad Administration on the design, location, and funding of this separation.

Factor: 0

Restatement 003809 15

One commenter stated that the Executive Summary (ES-20) indicated an increased likelihood for pedestrian accidents, while earlier statements in the document referred to safety benefits that would accrue from the project. 3809/15

One commenter stated that the Draft EIS makes no recommendations for trespass restraints, such as chain-link fencing, in urbanized areas in order to prevent pedestrian accidents.

Response

SEA believes that the proposed project will improve pedestrian safety by improving the conditions of the rail line, the rail right-of-way, and train operations. Safety measures are a critical component of the mitigation measures that SEA is recommending to the Board. These measures are both site-specific and project area applicable.

Factor:**Restatement**

007543

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A number of commenters identified specific locations of concern for pedestrians. One commenter noted that the Georgia Morse Middle School and the Pierre Indian Learning Center were both adjacent to the current rail line. One commenter expressed a concern for the approximately 150 Pierre students that must cross the two grade crossings daily to reach school. One commenter mentioned the need for pedestrian access in the Baker Street area near the high school in Winona. Two commenters stated that there were three highly utilized pedestrian crossings in Brookings. These were not identified.

Response

SEA recognizes the importance of providing safe pedestrian access to communities that are adjacent to or otherwise cross the rail line. SEA's recommended mitigation measures outlined in Chapter 12 of this Final EIS include measures to inform area residents about construction and operation activities associated with the proposed project. SEA recommends that at least one month prior to initiation of construction activities in the area, DM&E will provide information to each local emergency response organization for communities within the project area regarding project-related construction and operation of both the new and existing rail line. This information will include:

The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

Expected schedule for change in rail line operations along Applicant's existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

A toll-free number for the Applicant's contact who shall be available to answer questions or attend meetings for the purpose of informing emergency service providers about the project construction and operation.

Revisions to this information, including changes in construction schedule, as appropriate.

SEA's recommended mitigation requires DM&E to properly maintain its new and existing rail line. Maintenance would include trimming vegetation on railroad property that obscures visibility of oncoming trains and assuring that rail, railroad ties, track fastenings, and ballast material are in good repair, and that warning devices operate properly and are legible.

SEA also recommends that DM&E install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence shall be installed along all rail line right-of-way adjacent to residential property. SEA recommends that DM&E will consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design.

SEA has recommended mitigation for pedestrians in Brookings. For the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail in Brookings, South Dakota, SEA recommends that DM&E install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

11/15/2001

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Factor:

Restatement 004576 1

One commenter expressed general concern for safety at Eagle Lake.

Response

SEA has included additional analysis related to the construction and operation of the new rail yards near Eagle Lake in Chapter 4 of this Final EIS. This analysis includes the parameters for determining the location of proposed yards, additional environmental impacts, and the preferred alternative for staging yard locations.

Factor: 0

Restatement 000404 84

Mitigation

Costs

One commenter requested information on the cost responsibility of improvements. The commenter stated that cost obligations were unclear where local or state authorities deemed that an intersection should be grade separated but the STB had not required the improvement. The commenter believed that if taxpayers were responsible, then a socioeconomic analysis should be prepared. One commenter stated that it is the responsibility of DM&E to pay for the recommendations made by local transportation authorities. The commenter requested more specifics on mitigation. If mitigation is funded by taxpayers, the EIS should analyze the socioeconomic impacts of this mitigation.

Systems

One commenter suggested the implementation of an In-Vehicle Warning Systems. The commenter noted that DME would need to provide property access for installation. One commenter suggested that trains have better lighting and reflective tape on the sides of cars.

Operations

General

One commenter stated that the EIS should discuss the implementation of mitigation measures where DM&E would allow access to their right-of-way for the installation of train detection technology for use by school buses and emergency response vehicles. One commenter stated that the Draft EIS did not adequately address grade crossing safety and that gate arms and active warning devices be installed at all grade crossings.

Response

SEA realizes that mitigation costs can be significant. Because of the significant impact of DM&E's project in cities like Rochester, MN, and Pierre, SD, the Board believes that DM&E's share of the cost for design and construction of the grade separation should be a minimum of 50 percent. This is substantially more than the traditional railroad share for similar projects. Other mitigation measures recommended in Chapter 12 of the Final EIS would be DM&E's responsibility. Site specific mitigation activities are also provided in Chapters 4 through 9 of this Final EIS.

SEA recognizes the concerns related to school bus safety and visibility of trains. SEA recommends that DM&E consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses. Recommended mitigation measures, as outlined in Chapter 12 of this Final EIS,

will assist pedestrians and drivers to see trains. SEA recommends that DM&E install reflective material on the back side of all passive crossing warning devices, such as crossbucks, on the new and existing rail line.

SEA agrees that school bus safety is an important issue. SEA recommends that DM&E consult and coordinate with school districts regarding the potential placement on railroad property of equipment to permit the use of in-vehicle warning devices on school buses.

As detailed in Chapter 12 of the Final EIS, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: 0

Restatement 007554 181

One commenter expressed general safety concerns for the City of Austin.

Response

SEA has placed the improved safety of the DM&E rail line as a high priority in this proposed project. The proposed safety mitigation measures are detailed in Chapter 12 of this Final EIS and include community coordination, grade crossing improvements, better lighting and train markings, and improved right-of-way management.

Factor: 0

Restatement 008714 9

The EIS should contain a study of coal line derailments.

Response

Chapter 1 of the Draft EIS provided information about the frequency of DM&E derailments. The purpose & need for the project is to rehabilitate existing line and make it safer. It is expected that this activity will reduce the number of and potential for derailments. The proposed measures to improve the tracks and operating conditions of the railroad will reduce the likelihood derailments and other accidents. A specific study to examine coal derailments was not warranted for the proposed action.

Factor: 0

Restatement 007658 2

One commenter noted that the Draft EIS did not discuss the survivability rates of persons that are denied prompt emergency response care.

Response

SEA has sought to be responsive to the concerns expressed about emergency care response. A discussion of survivability as it relates to emergency care response is included in Chapter 9 of this Final EIS.

11/15/2001

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Factor:

Restatement 007554 221

One commenter expressed concern for general safety impacts from operations.

Response

SEA recognizes the concerns for improved safety associated with DM&E operations. Chapter 9 of the Final EIS describes in detail the impacts associated with the proposed alternatives in Rochester. Chapter 12 details the mitigation recommended for the City of Rochester. As Chapter 12 of the Final EIS describes, SEA recommends that the Applicant shall install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or at another mutually acceptable location. The Applicant shall negotiate with the Federal Railroad Administration, appropriate state and local transportation authorities, and the City of Rochester on the design, location, and funding of these grade separations. SEA recommends that the Applicant shall complete installation of one grade separated crossing prior to transporting more than 20 million tons of coal through Rochester for more than one year. Applicant shall complete installation of a second grade separated crossing prior to transporting more than 50 million tons of coal through Rochester for more than one year. Operation improvements include a state of the art train operating system and better lighting and right-of-way management.

Factor: 0

Restatement 007679 2

General concern for safety in the State of Wyoming, especially at grade crossings

Response

SEA reviewed the comments regarding grade separations in Wyoming. SEA determined that grade separations are not warranted in the State. SEA completed a thorough evaluation of the potential impacts to Highways 85 and 450 and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

As detailed in Chapter 12 of the Final EIS, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the Wyoming State Department of Transportation. SEA also recommends that DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: 0

Restatement 008716 8

One commenter stated that the Draft EIS does make clear why Alternative C has no significant impact for safety, yet Alternative B has significant impacts. It appears that both lines are similar.

Response

SEA agrees that the two alternatives have similarities. Section ES.8.2.2 of the Draft EIS indicates that the safety distinctions between Alternatives B and C are potential higher traffic volumes at three grade crossings.

Factor:

Restatement 007546 252

One commenter stated that the Draft EIS makes no recommendations for trespass restraints, such as chain-link fencing, in urbanized areas in order to prevent pedestrian accidents.

Response

Ch. 12 of this Final EIS describes SEA's recommended mitigation. SEA has recommended that DM&E install permanent fencing, where appropriate, along the new and existing rail line. If practicable SEA recommends that, in incorporated areas, an 8-foot high chain link fence shall be installed along all rail line right-of-way adjacent to residential property, and that DM&E will consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design

Factor: 0

Restatement 007546 256

Two commenters specifically requested that the Applicant consult with the communities of Mankato, Rochester, and Winona on the possible installation of a real-time train detection and monitoring system. The commenters stated that the Board should require the Applicant to provide access for installation if the system is warranted. One commenter stated that a computer monitoring system would be inadequate for assisting emergency vehicles. One commenter suggested the implementation of a global positioning system for Winona County in order to track the movement of trains for emergency response vehicles.

Response

SEA recognizes the potential need for train detection systems. Ch. 12 of this Final EIS describes SEA's recommended mitigation. As part of the mitigation, SEA is recommending that DM&E consult with communities requesting the possible installation of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. Such a system could help identify train movements for emergency response centers, showing the location of trains and/or the position of grade crossing warning signals.

Factor: 0

Restatement 007849 3

A number of commenters expressed concern for pedestrians in general areas such as in the State of Wyoming, in the City of Winona, in the Rochester area, in the Mankato area, and in the community of Skyline, near Mankato.

A number of commenters identified specific locations of concern for pedestrians. One commenter noted that the Georgia Morse Middle School and the Pierre Indian Learning Center were both adjacent to the current rail line. One commenter expressed a concern for the approximately 150 Pierre students that must cross the two grade crossings daily to reach school. One commenter mentioned the need for pedestrian access in the Baker Street area near the high school in Winona. Two commenters stated that there were three highly utilized pedestrian crossings in Brookings. These were not identified.

Response

SEA recognizes the legitimate concerns of citizens for pedestrian access and safety. Although no specific mitigation measures are recommended for the State of Wyoming, specific measures are identified for Mankato. These mitigation measures are outlined in Chapter 12 of this Final EIS.

If Alternative M-3, the existing rail corridor alternative through Mankato, is built, SEA recommended that DM&E provide appropriate fencing along the rail line in Mankato adjacent to parks, trails, or other recreational areas to provide a safe environment for users of the facilities. DM&E will consult with the City of Mankato about appropriate fencing design and the possibility of landscaping, including vegetative screening.

SEA recommends that DM&E consider the installation of a pedestrian and bike underpass of the Red Jacket Trail in Blue Earth County, south of Mankato, Minnesota, if Alternative M-2, the Mankato, Minnesota southern route, is built. At a minimum, SEA recommends that DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

SEA recommends that if Alternative M-2, the Mankato, Minnesota southern route is built, DM&E will consult with Blue Earth County, Minnesota regarding whether the portion of Alternative M-2 west of Mankato, Minnesota can be constructed so as to avoid impacts to the proposed Minneopa Trail.

SEA recommends that DM&E will work with the City of Mankato, Minnesota to determine if additional access can be developed to Land of Memories Park. Should a mutually acceptable plan for additional access be developed, DM&E will work with the City to help the City secure funding for the project.

SEA recommends if Alternative M-3, the existing rail corridor alternative through Mankato, is built, for the pedestrian crossings of the Sakatah Singing Hills State Trail, Blue Earth County, Minnesota, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

No specific mitigation is identified for pedestrians in Rochester, but the SEA's mitigation recommends two grade separated crossings in the City of Rochester.

Factor: 0

Restatement 006451 4

6451/4 Safety mitigation should be included for the towns of Goodview and Winona.

Response

SEA recognizes concerns related to pedestrian access and crossings in Winona and other areas in the project area. Recommended mitigation measures, as outlined in Chapter 12 of this Final EIS, will assist pedestrians in the safe crossing of the rail line. SEA recommends that DM&E will install reflective material on the back side of all passive crossing warning devices, such as crossbucks, on the new and existing rail line. In addition, SEA recommends DM&E will properly maintain its new and existing rail line. Maintenance will include trimming vegetation on railroad property that can obscure visibility of oncoming trains.

Also, SEA recommends that DM&E will install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence will be installed along all rail line right-of-way adjacent to residential property. SEA recommends that the Applicant shall consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design.

Factor: 0

Restatement 003800 9

9 One commenter expressed a general concern for safety issues related to the Cheyenne River Sioux Tribe.

Response

SEA recommends that DM&E implement safety measures uniformly across the project area. As stated in Chapter 12 of the Final EIS, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. SEA recommends that DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: 0

Restatement 007546 266

One commenter stated that school bus crossing calculations should have included parents who drive their children to school. A commenter stated that the Draft EIS did not address impacts to school bus schedules. 7566/71 One commenter noted that the Draft EIS includes no discussion of hazards faced by school bus drivers. The commenter referenced an NTSB Study (no title provided) indicating interior bus noise can mask the sound of train horns.

One commenter was concerned that rural crossings would not be gated and would result in dangerous crossings for school buses.

Response

SEA recognizes the concerns expressed for school bus safety associated with the proposed project. In response to these concerns, Ch. 12 of this Final EIS describes SEA's recommended mitigation, which includes recommending that DM&E consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses.

Additionally, SEA recommends that DM&E construct or reconstruct roadway approaches and rail line crossings for both new and existing grade crossings according to professional and accepted standards. These standards include the American Association of State Highway and Transportation Officials (AASHTO) design manual, applicable state rules, guidelines or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

Factor: 007708

Restatement

Minnesota

One commenter noted that the Board should require proper warnings at all grade crossings, following the requirements set forth in the Southern Minnesota Rail Corridor Safety Plan of February 2000.

One commenter stated that the Board should require adequate sight lines at all grade crossings. 7708/3 The same commenter stated that flashing lights and gates should be required on all major roads crossed by the highway including County State Aid Highway (CSAH) 16, CSAH 59, CSAH 71, CSAH 19, 75, 17, and 18. These crossings should be kept open. 7708/5 The commenter noted that there should be lights and gates at grade crossings for all sidings in Steele County.

Steele County commented that they require mitigation for the Rochester Bypass, including adequate sight lines on grade crossings, proper grade warnings for grade crossings, lights and gates on all major and county roads and the two proposed sidings, and maintained or improved clearances in substandard bridges.

11/15/2001

Similar

Mankato

Mankato Township commented that crossings should minimally have four-gate and center median protection systems, that all major roads be grade separated, and that additional safety protections be developed for limited sight visibility due to crops and removed snow.

Olmsted County

One commenter suggested that all 12 grade crossings between Olmsted County Highway 22 West and Olmsted County Highway 22 East be equipped with gates with sensors with horns that allow for whistle-free crossings.

Brookings

One commenter suggested that mitigation in Brookings for the B-2 Alternative consist of eliminating two of the pedestrian crossings and the use of warning devices on the remaining crossing.

Winona

One commenter expressed concern for the lack of proposed mitigation for the two at-grade crossings at Winona State University.

Response

SEA agrees and does require proper warnings at grade crossings. SEA's proposed mitigation in Chapter 12 of the Final EIS recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections, and that the implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA evaluated the potential environmental impacts of the alternative routes through Steele County and determined that the R-2 Alternative is the environmentally preferred alternative. Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

SEA agrees with the concerns expressed for crossings in Mankato, and SEA's recommended mitigation in ch. 12 of the Final EIS would require DM&E to install proper warnings at grade crossings, and consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. SEA recommends that implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation, and DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA reviewed the comments regarding grade separations in Mankato. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts and determined that the suggested Mankato crossings would not meet SEA's criteria for grade separations. See Chapter 7 of this Final EIS. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

SEA acknowledges the concern for crossings in Olmsted County. As previously discussed, SEA's recommended mitigation in Ch. 12 of the Final EIS would require DM&E to consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections. SEA also recommended that the implementation of all grade crossing protections should be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation, and that should DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA also recommends that DM&E should consult with interested communities along its new and existing rail line to identify alternative safety measures to eliminate the need to sound train horns in the community, in accordance with Federal Railroad Administration's final rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings.

For Brookings, at the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, SEA recommends that DM&E install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

Although no grade separations were identified for the City of Winona, SEA recommends that DM&E consult with the appropriate Federal and state transportation agencies to determine the final design and other details of the grade crossing protections, and that the implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate state Departments of Transportation. SEA recommends that DM&E maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor:

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Restatement 007543 4

South Dakota
Brookings Area

A number of commenters expressed concern for safety in the Brookings area. One commenter stated that increased rail traffic would increase the exposure index at major urban intersections, inconvenience University students, and that grade separations should be considered where feasible. One commenter stated that Alternative B4 would significantly increase accident frequency at several road crossings in Brookings.

One commenter noted that in Brookings Township 4 roads would be crossed, but these roads did not have the traffic volumes to warrant signal lights or crossing gates. The commenter stated that these are gravel roads with speeds of 45 to 55 mph. Another commenter expressed concern that fog and winter driving conditions around Sioux River, North Deer Creek, Six Mile Creek would make driving dangerous in the spring, fall, and winter.

Pierre

One commenter noted that Sioux Avenue in Pierre has the highest ADT of any crossing in the project area.

Response

SEA acknowledges the concerns by Brookings residents for the proposed project. Two specific mitigation measures are proposed for Brookings. If DM&E determines that the bridge over 6th Avenue requires reconstruction to permit movement of unit coal trains, DM&E will coordinate with the City and the South Dakota Department of Transportation to explore design options. A determination will be made whether the bridge can be designed and constructed to ensure safe passage of emergency vehicles.

For the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

SEA reviewed the comments regarding grade separations in Brookings. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts and determined that the Brookings Township crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

Chapter 6 of this Final EIS discusses the impacts associated with the alternatives for the Brookings area, including the Sixmile Creek floodplain and grade crossing safety.

SEA agrees that the Sioux Avenue intersection in Pierre merits mitigation in the form of a grade separated crossing. DM&E will install a grade separated crossing in Pierre, South Dakota, at Sioux Avenue or at an other mutually acceptable location, to be completed with in one year of commencement of unit coal train operations through Pierre. DM&E will negotiate with the appropriate state and local transportation authorities, City of Pierre, and Federal Railroad Administration on the design, location, and funding of this separation.

Factor: 0

Restatement 004576 7

Many commenters provided comments on specific locations where emergency response delays might occur in South Dakota. These locations include the following:

Eagle Lake. A commenter noted that fire and police departments are on the south side of the tracks and homes and businesses are on the north side. Response times that now average one minute or less could become five to ten minutes (or longer during construction).

City of Fort Pierre. One commenter noted that the rail line separated the City's only fire station from the other half of the city and that residents must have access to the City of Pierre for medical facilities.

City of Pierre. One commenter noted that there is only grade separation in Pierre -- a narrow secondary street that will have a high concentration of vehicles making emergency access difficult.

City of Brookings. A commenter indicated that grade separations would be needed at key intersections to provide for emergency response.

Response

SEA recognizes the community concerns related to emergency response capabilities. DM&E will consult with the communities of Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. Also, DM&E will discuss with communities the possible installation by DM&E of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community. This system would show the location of trains and/or the position of grade crossing warning signals. Additionally, DM&E will minimize trains blocking grade crossings throughout its system.

Additional discussions of potential impacts to Pierre and Brookings, SD are found in Chapters 5 and 6, respectively, of this Final EIS.

Factor: 0

Restatement 007546 229

The commenter is concerned with spill prevention.

Response

SEA recognizes the need for spill prevention plans. As part of the proposed mitigation measures, SEA recommends that DM&E will:

Prior to initiating any project-related construction activities develop a Spill Prevention, Control, and Countermeasure Plan (Plan) to prevent spills of oil or other petroleum products and other hazardous materials during construction and reconstruction activities, and operation and maintenance of the rail line. At a minimum, the Plan shall address the following:

- Definition of what constitutes a spill.
- Requirements and procedures for reporting spills to appropriate government agencies.
- Methods of containing, recovering, and cleaning up spilled material.
- Equipment available to respond to spills and their location.
- List of governmental agencies and Applicant's management personnel to be consulted with in the event of a spill.

In the event of a spill, Applicant shall comply with its Plan and applicable Federal, state, and local regulations pertaining to containment of the spill and appropriate clean up.

Also, the Applicant shall comply with Department of Transportation Hazardous Materials regulations (49 CFR Parts 171 and 179) when handling, storing, or disposing hazardous materials. The Applicant shall dispose of all materials that cannot be reused in accordance with applicable Federal, state, and local waste management regulations.

Factor: 0

Restatement 007554 39

One commenter expressed concern that the Draft EIS suggested that emergency response vehicles could use oncoming lanes of traffic at intersections to gain time in response to emergencies. Another commenter expressed concern that "whistle-free" intersections might require that intersections be gated for longer periods causing delays greater than those described in the Draft EIS.

Response

SEA recognizes the merits of both these mitigation comments. At this time there are no existing FRA regulations that allow for quiet zones. Horns must be activated at all at-grade crossings. At such time when the FRA provides for regulations for whistle-free or quiet zones, then agreements between the railroads and communities may be negotiated. These agreements are subject to the approval of the FRA. Safety measures in quiet zones may vary from location to location. DM&E will consult with interested communities along its new and existing rail line to identify alternative safety measures to eliminate the need to sound train horns in the community. These will be carried out in accordance with Federal Railroad Administration's final rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings. SEA also proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone.

Factor: 0

Restatement 007553 14

A number of commenters suggested safety mitigation for pedestrians in the cities of Winona and Brookings. One commenter stated that Winona should have three pedestrian-grade and bicycle-grade separations; two to serve the Winona State University (at Huff Street and at Main Street) and one to serve the east central area of the city (at Franklin Street). The commenter noted that the University is constructing a 300-bed housing unit near Franklin Street and that residents will need access from the north side to the south side of campus

across the rail line. These crossings are estimated to cost \$4.5 M. One commenter stated that the DM&E should pay the full cost of fencing (estimated at \$750,000) and landscaping (estimated at \$1,000,000) to provide safety to the children and other pedestrians in Winona.

A number of comments were received for mitigation in Brookings. One commenter requested the construction of a wall or fence within city limits to create a solid safety barrier between DM&E right-of-way and pedestrians. A commenter also recommended the installation of walkways over the tracks. One commenter expressed concern that for the B-2 alternative two crossings would be eliminated and one crossing would have warning devices installed. The commenter suggested walkways over the tracks.

Response

SEA recognizes the importance of providing safe pedestrian access to communities that are adjacent to or otherwise cross the rail line. Mitigation measures outlined in Chapter 12 of this Final EIS will be implemented to inform area residents about construction and operation activities associated with the proposed project. At least one month prior to initiation of construction activities in the area, DM&E will provide information to each local emergency response organization for communities within the project area regarding project-related construction and operation of both the new and existing rail line. This information will include:

The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

Expected schedule for change in rail line operations along Applicant's existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

A toll-free number for the DM&E's contact who shall be available to answer questions or attend meetings for the purpose of informing emergency service providers about the project construction and operation.

Revisions to this information, including changes in construction schedule, as appropriate.

DM&E will also consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response. DM&E will also discuss the possible installation of an electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system showing the position of trains and/or the position of grade crossing warning signals.

Another mitigation option would be for DM&E to conduct a media campaign throughout the counties and communities surrounding the rail line providing information and notice to the public of project-related changes along its existing system and commencement of operations along its new rail line. This campaign could include the use of different media (radio, television, newspaper, public meetings, etc.) and may include such things as public service announcements, advertisements, or legal notices.

DM&E will properly maintain its new and existing rail line. Maintenance shall include trimming vegetation on railroad property that obscures visibility of oncoming trains and assuring that rail, railroad ties, track fastenings, and ballast material are in good repair, and that warning devices operate properly and are legible.

DM&E will install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence shall be installed along all rail line right-of-way adjacent to residential property. DM&E will consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design

Similar

As stated in Chapter 12 of this Final EIS, at the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail in Brookings, South Dakota, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains. Applicant shall report to the Board that they have complied with this condition as part of its quarterly reports required prior to operation of unit coal trains through Brookings.

Factor: 0

Restatement 008067 3

Commenters expressed concern for safety problems associated with the I&M trains running through Dubuque.

Response

SEA received a number of comments about possible connections to the I&M rail link. The I&M Rail Link at Owatonna and the I&M Rail Link at Winona/Minnesota City have been identified by the Applicant as primary interchange points. There is currently no signed agreement with I&M at these interchange points.

If the project is approved, the Board is available to ensure the interchange of cars with connecting carriers when reasonable agreements cannot be reached. Potential future rail traffic on the I&M line, and impacts to communities served by the IMRL, was determined to be speculative and not within the scope of the EIS. For a more thorough discussion of the I&M rail link in Owatonna, please refer to Chapter 8 of this Final EIS.

Factor: 0

Restatement 000031 2

Two commenters stated that emergency response could improve with faster trains and improved grade separated crossings and that the EIS should indicate this fact.

Response

SEA recognizes the need to coordinate the proposed improvements in this project with emergency response providers throughout the study area. Chapter 12 provides specific recommended measures that will be used to ensure the safety of the communities and residents in the project area.

Factor: 0

Restatement 000034 2

A number of commenters expressed general concerns about delays to emergency vehicle response time. The commenters included ambulances, fire trucks and police cars in their discussions of responders. One commenter also included the response capabilities of veterinarians. Commenters also indicated that delays could occur for ambulances delivering patients to the hospital or doctor's office. Commenters specifically mentioned potential delays in the following Minnesota locales: Winona, the Town of Rock Dell, Stewartville Township, Rochester, Owatonna, Pleasant Grove Township, the Town of Dover, and New Ulm (Shag Road). Concerns in South Dakota were received from the cities of Pierre and Brookings, and the Custer County Conservation District.

Response

SEA recognizes that emergency medical care and police and fire responsiveness are critical concerns for residents and groups within the study area. The primary concern is a fear that train movements could cause emergency vehicles to be delayed at intersections. A number of mitigation measures have been proposed to address these concerns. The measures are listed in Chapter 12 and include: Grade Crossing/Warning Devices, Emergency Response coordination, Track Warning Devices and Track Infrastructure

recommendations, Hazardous Material Handling Issues, and Fire Prevention.

Factor:

0

Restatement 000080 1

DRAFT EIS

Methodology

Accident Analysis

One commenter expressed concern that the methodology for calculating accidents in the DEIS is flawed. The commenter noted that the model is not accurate for a doubling of train speeds.

One commenter stated that most at-grade collisions involve train speeds of 35 mph or less, and that one-quarter of the collisions involve the cars going around the gates or unaware of warning signals.

One commenter was concerned with the accident analysis performed for Olmsted County. The commenter noted that an average traffic count of 5000 ADT was not used for crossing analysis, thus removing most roads affected by the project and putting motorists at risk. The commenter was concerned that no grade separations, township roads, closings, or signage were discussed in the safety section. The same commenter stated that the DEIS did not apply the accident rate to Olmsted County to conclude that there will be one accident every 10 years in the county. The DEIS states an accident rate of 1 every 8 years, but does not present the assumptions -- trains, size and speed -- to reach the 1 accident in 8 years.

The commenter stated that flawed assumptions include passive grade crossing utilized at every crossing and paved roads. The commenter felt that MNDOT criteria and applicant proposals that were presented to communities should have been used as the baseline criteria. The commenter believed that the results overstated the accidents that can be expected for Alt R-3/R-4 as compared to R-2 (existing corridor). The commenter stated that incorrect data used in the analysis included the number of highway lanes and the number of tracks at certain crossings, characterization of the tracks as mainline or local service, and the number of day and night trains. The commenter noted that Appendix H showed an assumption of 2/3 day and 1/3 night trains, effecting the outcome of accident predictions since vehicular traffic distribution and historic accident factors are affected by the day/night distribution.

The commenter stated that the assumptions for accidents should have been equal for all three states and not skewed to the detriment of MN. The commenter believed that the analysis appeared to be a de facto prioritization and not an impact assessment. The commenter believes that a single rate reflective of the 80th percentile accident rate would have been a more defensible criteria to measure accident rate impacts in the project area.

One commenter noted that the Draft EIS specified the number of crossings that must be constructed for R-4 but not the number of crossings to be reconstructed for R-2. The commenter noted that the DEIS states that R-2 would give rise to "significant" increase in accident frequency at one crossing, but that R-4 increases are below criteria for significance. FEIS should note the safety benefits of the grade separations that Rochester proposes for R-4.

One commenter stated that the assumption that TWSC operations are similar in nature to the judgement a motorist exercises at a highway rail crossings was misapplied, noting that judgements are more similar to those exercised at a signalized intersection. The commenter referred to "Traffic Flow Fundamentals" and TRB Special Report 165, and noted that LOS is typically used to measure peak hour traffic impacts. The use of the LOS over a 24-hour period masks the critical conditions observed during critical times (refer to table of data presented). The commenter stated that the criteria for assessing the significance of expected increases in highway-rail crossing accidents treated Minnesota communities differently than South Dakota and Wyoming communities. The commenter believed that the risk of accidents to drivers is not equitably measured across the three states, and that

Similar

the Group A and Group B designations favor the other states over Minnesota. The commenter stated that the applicant should not have used an assumption that all crossings would be protected by passive devices. The commenter noted that there are differences in the MNDOT and the applicant's standards applied to grade crossing protection; MNDOT identified 50% more existing grade crossings that should have lights and gates. The commenter stated that the STB should show support for the standards established by the State of Minnesota for grade crossing protection. The commenter also stated that erroneous input data used in the DEIS for the accident safety analysis included the number of travel lanes on certain roadways, number of mainline tracks, and whether the road is paved or gravel.

One commenter stated that the applicant did not utilize the MNDOT for locating driveway, road, local street and highway crossings.

Response

SEA acknowledges the concerns by Brookings residents for the proposed project. Two specific mitigation measures are proposed for Brookings. If DM&E determines that the bridge over 6th Avenue requires reconstruction to permit movement of unit coal trains, DM&E will coordinate with the City and the South Dakota Department of Transportation to explore design options. A determination will be made whether the bridge can be designed and constructed to ensure safe passage of emergency vehicles.

For the pedestrian crossings at 12th Avenue, 16th Avenue, and the Interstate 29 pedestrian and bike trail, DM&E will install and maintain warning signs, clearly advising the public to proceed with caution due to the possible presence of trains.

SEA reviewed the comments regarding grade separations in Brookings. SEA determined that grade separations are not warranted for this community. SEA completed a thorough evaluation of the potential impacts and determined that the Brookings Township crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's recommended transportation mitigation.

Chapter 6 of this Final EIS discusses the impacts associated with the alternatives for the Brookings area, including the Sixmile Creek floodplain and grade crossing safety.

SEA agrees that the Sioux Avenue intersection in Pierre merits mitigation in the form of a grade separated crossing. DM&E will install a grade separated crossing in Pierre, South Dakota, at Sioux Avenue or at an other mutually acceptable location, to be completed within one year of commencement of unit coal train operations through Pierre. DM&E will negotiate with the appropriate state and local transportation authorities, City of Pierre, and Federal Railroad Administration on the design, location, and funding of this separation.

Factor: 0

Restatement 000044 3

Two commenters expressed concern that on-call physicians would experience potential response delays to local hospitals as a result of train movements through intersections.

Response

SEA recognizes that delays will occur at intersections. The analysis indicates that these delays would not be significantly adverse. Chapter 9 of this Final EIS provides additional information about emergency response and delays. Mitigation to alleviate delays includes grade separations, coordination of construction activities with local emergency service providers, and the potential implementation of systems to track train movements in order to coordinate response activities.

11/15/2001

Similar
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Factor:

Restatement 003016 11

Many commenters provided comments on specific locations where delays might occur. These locations include:

New Ulm. For Option B the highway and street crossings in New Ulm would be closed for longer periods of time than under Option A. The commenter indicated that this increased closure time should be addressed in the EIS for emergency response.

Eagle Lake. A commenter noted that fire and police departments are on the south side of the tracks and homes and businesses are on the north side. Response times that now average one minute or less could become five to ten minutes (or longer during construction).

Mankato. A commenter noted that the Southern Route would have a negative impact on patrol and response times in the area.

One commenter stated that emergency vehicles would have alternate routes under the M-3 alternative but that the M-2 route had fewer options.

A commenter expressed concern that emergency vehicles would not have access to the Land of Memories Park during the September powwow, and during events of that week. The commenter noted that the at-grade crossing on Bird Avenue is the Park's only access.

Rochester. One commenter indicated that the proposed Bypass would result in emergency vehicles having to navigate difficult roads to access residents. Another commenter noted that the Draft EIS omitted any discussion of emergency response impacts of Alternatives R-3 and R-4 for residents in rural areas.

Owatonna. One commenter indicated that the intersection of IMRL at School Street and Havana Road would be problematic for emergency vehicles while trains crossed.

City of Fort Pierre. One commenter noted that the rail line separated the City's only fire station from the other half of the city and that residents must have access to the City of Pierre for medical facilities.

Pierre. One commenter noted that there is only grade separation in Pierre -- a narrow secondary street that will have a high concentration of vehicles making emergency access difficult.

City of Brookings. A commenter indicated that grade separations would be needed at key intersections to provide for emergency response.

Winona. One commenter indicated a concern that the south side of the community would not be served by emergency medical and fire vehicles if crossings were blocked.

One commenter indicated that flooding in the City of Austin results in the blockage of east-west access, and that a train blocking 8th avenue, NE would result in serious emergency service delays.

Response

SEA recognizes the potential for project construction and operations to have a disruptive effect on travel patterns. To this end, SEA has recommended mitigation measures to address concerns for emergency response capabilities. At least one month prior to construction, DM&E will provide the following information to each local emergency response organization or other similar body for communities within the project area:

The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

Expected schedule for change in rail line operations along DM&E's existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

A toll-free number for DM&E's contact who will be available to answer questions or attend meetings for the purpose of informing emergency service providers about the project construction and operation.

Revisions to this information, including changes in construction schedule, as appropriate.

DM&E will consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and any other affected communities that so request, to coordinate train movements and emergency response and discuss the possible installation by DM&E of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency response center of each community showing the location of trains and/or the position of grade crossing warning signals. Additionally, DM&E will minimize trains blocking grade crossings throughout its system.

Winona is not located on DM&E rail line. DM&E trains coming from the east end just north of Winona. The rail line that runs north and south through Winona is owned and operated by CN. SEA evaluates the impacts to Winona as part of the project, however the Board cannot impose mitigation on rail lines owned by other rail companies.

Additional discussions about safety issues in Mankato are found in Chapter 7 of this Final EIS. Specific analysis of safety responsiveness in Rochester is found in Chapter 9 of this Final EIS. A further discussion of impacts in Owatonna is found in Chapter 8 of this Final EIS.

DM&E and the City of New Ulm have reached an agreement covering all aspects of potential rail line impacts. A copy of the negotiated agreement may be found in Appendix E of this Final EIS.

Factor: 0

Restatement 000301 3

A number of commenters expressed general concern for grade crossing safety in Rochester. One commenter stated that travelers to the Mayo Clinic would have a greater likelihood for accidents due to their unfamiliarity with the streets in Rochester. One commenter expressed a concern that the Applicant had failed to provide reasonable proposals to minimize the safety risks in the proposal and that multiple grade separations were required.

One commenter noted that in Rochester a train of 1.25 or 1.4 miles in length could add significantly to the delay at several grade crossings simultaneously as the trains decelerate in approach to one of the three proposed sidings.

11/15/2001

Similar

A number of commenters expressed concern about impacts from the Rochester Bypass. One commenter stated that the crossings should be discussed in the EIS. One commenter stated that rural areas would not have the same level of safety devices as in the city. The commenter noted that farm equipment moves slower and creates a greater likelihood for accidents. One commenter stated that crossings would cross at a 45 degree angle with reduced visibility and no lighted crossing arms and markings.

One commenter stated that there were potential ramifications from longer sidings and slower speeds on the proposed sidings in Olmsted County, and that the sidings and their location should be assessed.

Eagle Lake

One commenter stated that the proposed staging yard and crossings in Eagle Lake would become congested and create barriers to the community.

Mankato

Mankato Township commented that the Board should undertake studies using GradeDeck 2000 to analyze all crossings.

Winona

Two commenters expressed concerns for the safety at uncontrolled rural crossings on the CP rail track southeast through Winona County where over 1000 Winona State University students cross the track every.

Response

SEA agrees that grade separations are required in Rochester. Two grade separations are proposed as mitigation of grade crossing impacts. The parameters of this mitigation are specified in Chapter 12. While unfamiliarity with streets may increase a driver's risk of having an accident, drivers who are cognizant of street and rail signage should be able to successfully navigate urban areas. DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections. Proper signage will be placed at these intersections.

The Draft EIS states that passing sidings will be designed to allow entry at main line speeds of 45 mph at which point reduced speeds will be implemented (see Appendix A of the Draft EIS). The final location of sidings will change, based on topographic and other engineering conditions. Appendix I of this Final EIS includes a summary chart of milepost localities for proposed rail sidings under each Extension Alternatives.

SEA evaluated the potential environmental impacts of the alternative routes through the Olmsted County area and determined that the R-2 Alternative is the environmentally preferred alternative. Based on the analysis in the Draft and Final EIS, SEA is not recommending bypasses for any of the communities that submitted bypass proposals. SEA determined that the existing route, with appropriate mitigation, is the environmentally preferred alternative, if the Board approves the project.

SEA has included additional analysis related to the construction and operation of the new rail yards near Eagle Lake in Chapter 3 of the Draft EIS. This analysis includes the parameters for determining the location of proposed yards, additional environmental impacts, and the preferred alternative for staging yard locations.

SEA recognizes the concerns related to crossings in Mankato and other areas. The task of determining the need and type of warning device to be installed at a crossing is a multi-step process that can not be determined solely from the outcome of a formula or a list of state guidelines. Additionally, a diagnostic review must be conducted to take into consideration other factors that can not be quantified easily in the formula such as sight distance, roadway geometrics, and passenger vehicles (Rail-Highway Crossing Resource Allocation Procedure-USDOT). The process for determining the appropriate type of device to be installed at the crossing falls under the jurisdiction of the MNDOT. DM&E will consult with local and state transportation authorities to determine the best device for each crossing.

Similar

Recommended mitigation measures, as outlined in Chapter 12 of this Final FEIS, will assist pedestrians in the safe crossing of the rail line. DM&E will install reflective material on the back side of all passive crossing warning devices, such as crossbucks, on the new and existing rail line. In addition, DM&E will properly maintain its new and existing rail line. Maintenance will include trimming vegetation on railroad property that can obscure visibility of oncoming trains.

DM&E will also install permanent fencing, where appropriate, along the new and existing rail line. If practicable, in incorporated areas, 8-foot high chain link fence will be installed along all rail line right-of-way adjacent to residential property. Applicant shall consult with appropriate state and local authorities in incorporated areas to determine appropriate fencing design.

DM&E does not own rail lines in the City of Winona; they are owned by CN. The Board can only recommend mitigation for the Applicant railroad. It has no jurisdiction over other rail companies.

Factor: 0

Restatement 000376 3

Wyoming
One commenter noted that Highway 85 is a major north/south route, Highway 450 is a major east/west route, and that there was a need for grade separations and lighted gates paid for by the Applicant. One commenter stated that the Applicant had not yet (12/11/00) contacted Wyoming Counties to discuss county concerns for the rail crossings.

Response
SEA reviewed the comments regarding grade separations in Wyoming. SEA determined that based on its analysis, grade separations are not warranted for these communities. SEA completed a thorough evaluation of the potential impacts to Highways 85 and 450 and determined that the crossings would not meet SEA's criteria for grade separations. Chapter 12 of this Final EIS discusses SEA's transportation mitigation.

As detailed in Chapter 12 - Mitigation of the Final EIS, DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate State Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor: 0

Restatement 000409 3

A number of commenters provided comments on mitigation measures to reduce delays at intersections. One commenter stated that emergency vehicle delay is not an impact that can be mitigated and that the effect of delays on human life should be weighed carefully before the project is approved. Another commenter inquired if fire and police services would be evenly distributed at all times to insure access for the hospital. Another commenter requested that full access was in place in the form of roads, heliports, helipads.

Response

SEA acknowledges the concerns expressed for potential delays to emergency vehicles. For this reason, SEA has recommended mitigation to assist in the free-flow of traffic during construction and operation of the proposed project. Specific mitigation is outlined in Chapter 12 of this Final EIS. The distribution of medical and emergency personnel in any given locale is the responsibility of the controlling jurisdiction. DM&E can assist these jurisdictions by making information available on the construction schedule and operations timetables.

Factor:

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Restatement

006453

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A number of commenters stated that the Draft EIS failed to adequately address the impact of the proposed project on emergency response times in Rochester. Another commenter indicated that emergency response delays during construction are not analyzed in the document. One commenter stated that the EIS did not give adequate attention to the "total daily blocked crossing time" for intersections. Calculations provided the commenter indicated an 80% increase in delays. The commenter stated that the R-2 option would result in a doubling of the current delay times for emergency vehicles. One commenter noted that crossing activation failure records maintained by the FRA should be used in the calculations for determining delays at intersections. One commenter took exception with the conclusion in the Draft EIS that emergency response impacts cannot be evaluated. One commenter stated that both the Rochester fire and police departments disagreed with the statement in the Draft EIS that the most an emergency vehicle would be delayed is 2.6 minutes (Vol II, page 3.2-85).

One commenter stated that the Draft EIS did not provide data for the number of times ambulances cross the tracks or the time issues associated with stroke or heart attack **Responses.**

One commenter noted that the Draft EIS did not discuss the survivability rates of persons that are denied prompt emergency response care.

One commenter stated that although the Draft EIS refers to the random nature of emergencies, that an examination of calls for the past year indicates that ambulances in Olmsted County were delayed once every 32 hours.

Response

SEA acknowledges the potential impact and concern expressed by citizens for emergency response times and possible delays. Based on comments received, SEA conducted additional analysis on vehicle delay. Chapter 9 of this Final EIS provides additional analysis and data regarding delays to emergency vehicles in the Rochester area. This information includes specific data about survivability rates and factors associated with medical response times.

The lack of national standards and guidelines to address vehicular delay at highway/railroad crossings have required the Board to develop indicators that can help screen where obvious traffic congestion problems may occur. These same methodologies were applied by SEA during the analysis. Appendix G of the Draft EIS presents a formula for calculating the vehicle delay. The formula uses a multiplicative factor of 0.0833 to convert average daily traffic to peak hour traffic. The factor is obtained by multiplying the average hourly traffic by two. This factor falls within an acceptable range for traffic planning purposes when the actual 15-minute peak hour counts are not available. Appendix L of this Final EIS contains technical data supporting additional analysis related to the calculation of vehicle delay at grade crossings.

Factor:

Restatement 002749 1

One commenter was concerned that consultation did not necessarily mean trust or honesty.

Response

SEA has consulted with tribes at all stages of the environmental review process. As stated in the Draft EIS in Appendix I, SEA consulted with various agencies and tribes and identified 32 federally recognized tribes having historic, aboriginal or current ties to the project area. Consultation was initiated with these tribes by sending letters to the Chairman and any known cultural resource contact of each tribe and phoning each Tribal government to explain the request for consultation and the project. Each tribe was asked to appoint traditional and or cultural representatives to represent the tribe in the consultation efforts. Out of respect for cultural differences, the wisdom of elders and the historically unresolved issue of treaties, several Tribal groups/organizations were invited to participate in consultation meetings. The Draft EIS lists the various Tribal consultation meetings in Appendix I.

Factor: 0

Restatement 007564 11

One commenter stated that perhaps the Applicant should be responsible, in part, for funding an emergency response infrastructure to respond to emergencies related to derailments.

Response

While a response to derailments is not a mitigation measure specified in the Final EIS, SEA agrees that DM&E should consult with requesting communities to implement mitigation measures to enhance the responsiveness of emergency vehicles and personnel. One mitigation measure recommended by SEA is for DM&E to explore with communities the use of a GPS train monitoring system to track train movements. See Chapter 12 of this Final EIS for more details related to the proposed mitigation measures.

Factor: 0

Restatement 001314 1

The only substantive discussion of safety is in the Executive Summary discussion of the No-action alternative. No other independent or other public safety experts were consulted in this report. The statement that further deterioration of safety would take place without project approval is disturbing coming from a railroad company, especially as it relates to past business practices. There was no safety comparison for the Rochester alternatives. Comparisons with rail systems in the US should be made to verify that future expansion will result in safer operations through downtown Rochester.

Response

SEA recognizes the concern expressed for safety of the rail operations. An explicit purpose for the proposed project is the increased safety of the DM&E operations. This will be achieved through, among others, track replacement and upgrade, improved grade crossings, and improved operational features. Specific safety mitigation measures are presented in Chapter 12 of this Final EIS. A discussion of potential rail impacts along the Rochester Alternatives is found in Chapter 9 of the Final EIS.

Factor:

Restatement 002327 2

General

A number of commenters stated that the project would bring improvements to grade crossings with better-marked crossings and reduce the potential for accidents. 2327/2, 7542/11

A number of commenters expressed concern that the project would increase the potential for fatal accidents at crossings. One commenter noted that unprotected crossings would be dangerous. One commenter noted that rural crossings pose a substantially greater risk of accidents than urban crossings as seen in records published by the MN Dept. of Public Safety.

Response

SEA agrees that project implementation would bring about safer and more reliable rail service, as stated in the Purpose and Need for the project in Section 1.3.1 of the Draft EIS. Safer intersections and a reduction in the potential for accidents are goals of the proposed project.

SEA acknowledges that the proposed project would result in an increase in the number of trains on the DM&E line. However, DM&E has indicated that it would fund major grade crossing and right-of-way protection enhancements, provide an entirely new track infrastructure with new welded rail, and install a state-of-the-art signaling system for train control. These improvements will result in safer railroad operations.

As detailed in Chapter 12 of this Final EIS, DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections.

The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate State Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

Factor:

0

Restatement 000404 22

Results

One commenter stated that the sheer increase from 1 to 37 trains a week will not improve grade crossing protection at any intersection. 404/22 Another commenter noted that on page ES-20 it states that rail line crossings would provide opportunities for vehicle/train accidents seems at odds with statements that the project would have a safety benefit.

One commenter noted that in Volume 1, page 2-30, the EIS states that there is no significant impact for Alternative C, yet there are significant impacts for Alternative B. However, the Draft EIS states that Alternatives B and C are essentially the same. The commenter would like to see a side by side comparison of safety impacts for these alternatives.

Response

SEA understands the concerns of local residents that will experience increased train volumes along the proposed route. However, a key component of the proposed action is the upgrade of the existing line as well as improvements to the ancillary components of the DM&E operations, including signage, fencing, maintenance activities, and train control systems. Many of these upgrades are specified in Chapter 12 - Mitigation for the Final EIS. Based on public comment and additional analysis, SEA determined that Alternative C,

with appropriate mitigation, is the environmentally preferred alternative. The specific elements of the preferred alternative, Alternative C, including safety issues are detailed in Chapter 3 of this Final EIS.

Factor:

0

Restatement 006454 18

South Dakota

The State of South Dakota commented that it expects DM&E to provide the highest level of crossing protection at no cost to the state, and that the State must be part of all agreements with DM&E to determine adequate crossing protection.

One commenter indicated a concern that the entrance road to Farm Island State Recreation Area will become blocked and that traffic will back up onto Highway 34, and that a turn lane must be added on Highway 34.

One commenter noted that grade separations are expensive and that it would be cost effective to install them sooner than later. The commenter also requested that the Board require the Applicant to construct grade separation for all crossings in the Edgemont School District.

One commenter noted that the proposed mitigation allowing for one lane of passage for emergency response vehicles does not take into account the South Dakota Codified Law 49-16A-119. The commenter requested that the phrase "to the extent practicable" be stricken from document.

The State of South Dakota noted that they asked DM&E's Engineer to meet with each county to discuss and agree to protection at each county, but to date this had not been done.

The commenter is concerned that 4 new grade crossings are listed for the Oral Segment, but that the number of existing crossings are not provided in order for the alternatives to be compared.

Response

SEA agrees with the comment that the highest level of protection should be provided that is warranted for an intersection. To this end, DM&E will consult with the appropriate Federal and State transportation agencies to determine the final design and other details of the grade crossing protections. The implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration and the appropriate State Departments of Transportation. DM&E will maintain the new and existing rail line and grade crossing warning devices according to Federal Railroad Administration track safety standards (49 CFR Part 213).

SEA recognizes the need to maintain adequate park access during construction and operations. DM&E will consult with Federal and state land managers including the South Dakota Game, Fish and Parks, to determine locations where project-related construction and reconstruction activities will result in lost or reduced access to public lands due to temporary road closures or other construction related activities. DM&E will develop a plan to provide alternative access to these lands during project-related construction and reconstruction activities and operation of unit coal trains to the extent practicable.

SEA believes that the mitigation proposed in Chapter 12 of this Final EIS will help provide for emergency vehicle operations during project construction and operations. DM&E will coordinate with the appropriate state Departments of Transportation, counties, and affected communities to install temporary notification signs or message boards on railroad property at public grade crossings. The specifics of this program will be determined by the State and/or County that warrants these measures. The signs will clearly advise motorists of the impending increase in train traffic and train speeds along its existing system and commencement of operations along its new rail line.

Factor:

Restatement 006313 8

A number of commenters expressed general concerns for school bus safety at railroad crossings in Rochester, Stewartville, Byron, Dover, Eyota, Hayfield, Kasson-Mantorville, and Olmsted County. One commenter stated that grade separations are appropriate where exposure exceeds 200,000 vehicles per day and that 7 grade separations are warranted in Rochester and one grade separation in Byron. One commenter stated that the Rochester bypass would increase school bus exposures for the Rochester, Byron, Stewartville, Hayfield, and the Dover/Eyota schools.

Mankato

One commenter stated that Mankato school buses cross railroad tracks 69 times a day, and that increased crossings would be unsafe.

Response

Many of the concerns expressed for rural crossings around Rochester will not be realized under SEA's environmentally preferred alternative. The preferred alternative does not include the proposed Rochester Bypass. In response to grade crossing concerns in the City of Rochester, SEA has proposed mitigation in the form of two grade-separated crossings of the rail line. These are detailed in Chapter 12 of the Final EIS. In response to concerns for school bus safety in Mankato and other parts of the study area, DM&E will consult and coordinate with school districts about permitting the placement of school bus in-vehicle warning devices on railroad property. DM&E and the communities of Byron, Dover, Eyota and Kasson have reached an agreement covering all potential impacts of the proposed project. Copies of those negotiated agreements may be found in Appendix E of the Final EIS.

Factor: 0

Restatement 006448 5

A number of commenters remarked on safety concerns related to school bus routes in the rural 700-square mile Edgemont School District. There is a concern that existing crossings are unsafe and not maintained by the railroad. One commenter stated that 6 - 7 new crossings are planned; one gated, one with lights, and the rest with passive warning devices, and that based on accident analysis there will be 1 accident every 5 years which is an unacceptable.

Response

SEA acknowledges the concerns regarding school bus safety in rural areas. The proposed project includes safer grade crossings and improved maintenance of the line. DM&E proposes to consult with the South Dakota Department of Transportation to consider if the grade separation proposed in the Grade Crossing Mitigation Plan of US Highway 18 east of Edgemont, South Dakota can be designed to accommodate future expansion of this highway to four lanes. In addition, DM&E will consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses.

Factor: 0

Restatement 007556 25

One commenter presented analysis that the Rochester police will be delayed once every 4.1 hours, ambulances delayed once every 32.8 hours, and fire fighters delayed once every 89.4 hours. The commenter requested that these facts be included in the Final EIS.

Response

Emergency events are random in nature and SEA has not identified objective methodology to determine the amount of time or frequency that emergency vehicles are delayed.

SEA recognizes the emergency response concerns of local residents in communities served by the rail line. In response to the concerns for safe access and full emergency **Response**, SEA proposes that during construction at grade crossings, DM&E will maintain at least one open lane of traffic at all times or provide for detours to allow for the quick passage of emergency and other vehicles. Signage for these detours will be placed in the construction work zone. In addition, DM&E will install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or other mutually acceptable location.

Also, SEA is recommending that prior to the initiation of project related reconstruction activities in Rochester, Minnesota, that DM&E establish a special Mayo Clinic liaison. The role of the liaison will be to consult with Mayo Clinic officials to facilitate communication between DM&E and the Mayo Clinic. This can include developing cooperative solutions, conducting periodic information briefings to allow the exchange of information between DM&E and the Mayo Clinic, and working to promptly address Mayo Clinic concerns related to the project.

SEA acknowledges the comments pertaining to city-wide evacuations and the possible delays caused by trains to transport people from local facilities. This does not appear to be a credible scenario for evaluation under the proposed action.

Impacts to rural residents are not expected under the R-3 and R-4 bypass alternatives. The preferred alternative is to route the line using the R-2 Alternative through Rochester. An additional discussion of emergency response times and capabilities is found in Chapter 9 of this Final EIS.

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While the upgrade of the tracks is seen as a benefit, it should be noted that many of the DM&E accidents and safety problems were unrelated to track. Included in the operational problems are operating practice problems, power and equipment problems, mishandling of hazardous materials, and defects in signals.

Response

SEA acknowledges the safety concerns expressed by the commenter. Chapter 1 of the Draft EIS acknowledged problems with the train signaling system, lights and gates at intersections, and right-of-way protection. These and other safety concerns are to be addressed by DM&E. In Chapter 12 of this Final EIS, SEA provides detailed descriptions of the proposed mitigation measures related to safety improvements.