U.S.D.A. FOREST SERVICE
RECORD OF DECISION

DAKOTA, MINNESOTA & EASTERN RAILROAD POWDER RIVER BASIN EXPANSION PROJECT

NEBRASKA NATIONAL FOREST, BUFFALO GAP NATIONAL GRASSLAND--SOUTH DAKOTA
And
MEDICINE BOW-ROUTT NATIONAL FORESTS AND THUNDER BASIN NATIONAL GRASSLAND--WYOMING

Located within Custer and Pennington
Counties in South Dakota; and Weston, Converse, and Campbell Counties in Wyoming

Responsible Official
Rick D. Cables
Regional Forester
Rocky Mountain Region (Region 2)

September 2003

TABLE OF CONTENTS

Title		Page
Agencies		1
I.	Introduction	2
	A. Nature of Decision	2
	B. Background	2
II.	Purpose of and Need for Action	3
III.	My Decision	4
	A. Decision	4
	B. Rationale for My Decision	6
	C. Effects of My Decision	7
	D. Changes Between Draft and Final	11
IV.	Public Involvement	11
V.	Alternatives	12
	A. Selected Alternative: Alternative C ñ Modified Proposed Action, (Phiney Flat variation)	12
	B. General Overview of Alternative C - Modified Proposed Action	13
	Other Alternatives Considered	14
	1. Alternative A ñ No Action Alternative	13
	2. Alternative B ñ Proposed Action	14
	3. Alternative D ñ Existing Corridors Alternative	15
	Alternatives Considered But Not Analyzed in Detail	16
VI.	Findings Required by Laws	16
VII.	Environmentally Preferred Alternative	22
VIII	Mitigation and Monitoring	23
IX.	Implementation and Appeal Provisions	25
X.	Contact Person	26
	Regional Forester Signature	26

APPENDICES

Appendix A, Map of Alternative C ñ Modified Proposed Action
Appendix B, Forest Service Mitigation Requirements for the Dakota, Minnesota and Eastern Railroad Expansion Project, including Tables 1. a&b, 2. a&b
Appendix C, Biological Opinion
Appendix D, Programmatic Agreement
Appendix E, Land Management Plan Amendment, Thunder Basin NG
Appendix F, Land Management Plan Amendment, Nebraska National Forest and Associated Units

The United States Department of Agriculture (USDA) prohibits discrimination on the basis of race, color, national origin, sex, religion, age disability, political beliefs, and marital or familial status. (Not all bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA Office of Communications at (202) 720-2719.

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20250, or call 1-800-245-6340 (voice) or (202) 720-1127 (TDD). UDA is an equal employment opportunity employer.

AGENCIES

Lead Agency: Surface Transportation Board, Washington, D.C.

Cooperating Agencies:

U.S. Department of Agriculture, Forest Service, (hereinafter referred to as USDA Forest Service or Forest Service) including the Douglas Ranger District of the Medicine Bow-Routt National Forests and Thunder Basin National Grassland in Wyoming; and the Fall River Ranger District of the Nebraska National Forest, administering the West-half of the Buffalo Gap National Grassland in South Dakota

U.S. Department of Interior, Bureau of Land Management, Newcastle Field Office, Newcastle, Wyoming

U.S. Army Corps of Engineers, Omaha District
Omaha, Nebraska

U.S. Army Corps of Engineers, St. Paul District
St. Paul, Minnesota

U.S. Department of the Interior, Bureau of Reclamation, Dakotas Area Office
Bismarck, North Dakota

U.S. Department of Transportation, Coast Guard
St. Louis, Missouri

With the Participation of: Environmental Protection Agency, Region 8
Denver, Colorado

Environmental Protection Agency, Region 5
Chicago, Illinois

U.S. Fish & Wildlife Service
Cheyenne, Wyoming

I. INTRODUCTION

A. Nature Of Decision

This Record of Decision (ROD) was developed according to requirements of the National Environmental Policy Act (NEPA), and states my decision concerning the adoption of Amendment 2003-01 for the Thunder Basin National Grassland and Amendment 2003-01 for the Nebraska National Forest and Associated Units Land Resource Management Plans and the issuance of an authorization for construction and operation of the Dakota, Minnesota & Eastern Railroadís (DM&E) Special Use Application. The issuance of a construction permit and a subsequent authorization for operation of a heavy-haul railroad is considered a major federal action and therefore requires a Record of Decision based on an Environmental Impact Statement for the project on NFS lands. This ROD includes a discussion of the authorities and requirements that are part of the decision; my rationale for the decision; the factors that were considered in the decision; and the opportunities that are available to appeal the decision.

I have chosen **Alternative C, Modified Proposed Action (Phiney Flat variation),** as identified in the *Final Environmental Impact Statement for the Powder River Basin Expansion Project* (DM&E Project). The authorizations would be issued under the *Federal Land Policy Management Act* (FLPMA) and would apply only to National Forest System (NFS) lands in South Dakota and Wyoming administered by the Forest Service.

Alternative C, Modified Proposed Action (Phiney Flat variation), identifies approximately 33 miles (approx 800 acres) of new rail corridor located on the Thunder Basin National Grassland within Weston, Converse and Campbell Counties in Wyoming. The Alternative identifies approximately 6 miles (approx 150 acres) of new rail corridor located on the Buffalo Gap National Grassland within Custer and Fall River Counties in South Dakota.

B. Background

On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Department of Transportationís Surface Transportation Board (STB) to construct and operate approximately 280 miles of new railroad line in western South Dakota and eastern Wyoming. This project, in conjunction with a comprehensive upgrade and reconstruction of approximately 598 miles of DM&Eís existing rail infrastructure in South Dakota and Minnesota, would allow DM&E to access the coal mines in Wyomingís Powder River Basin (PRB) and transport up to 100 million tons of coal per year across portions of Wyoming, South Dakota, and Minnesota.

As a Cooperating Agency with the STB, the Forest Service participated in the analysis and preparation of the final Environmental Impact Statement for the DM&E proposal. As a result of the analysis, it was concluded that the Forest Service would issue a Record of Decision to allow for the issuance of a construction permit and a longer-term authorization for operation of the rail line.

II. PURPOSE OF AND NEED FOR ACTION

The purpose and need of the project is described in Volume 1, Chapter 2, pages 2-2 through 2-3 of the Final Environmental Impact Statement (Final EIS) as follows in pertinent part:

> ***Purpose of Proposed Action***: *DM&Eís Application identified two primary purposes for the project: first, to have a third rail carrier serve the PRB, enhancing competition and operations; second, to improve service and operation safety of its existing operationsÖ.*
>
> *Ö The second purpose would be accomplished by rebuilding the existing rail line. Ö rehabilitating and rebuilding the existing infrastructure would reduce the high incidence of derailments caused by track failure and provide significant improvements to grade crossing protection for train and vehicular traffic. Ö rehabilitation would increase operating speeds and car weights throughout the system, enabling DM&E and its customers to compete better in their existing markets and possibly expand into new markets.*
>
> *Ö Increased competitive access to lower-sulfur PRB coal would facilitate objectives of Phase II of the Clean Air Act Amendments of 1990 sulfur-dioxide emission reductions, which took effect in 2000, by creating another economical way for utilities to replace high-sulfur coal with lower sulfur PRB coal. Construction and operation of this project, Ö would convert DM&E to a Class I railroad and offer a more reliable national and regional rail transportation system by increasing rail capacity. Increased rail system safety, reliability, and efficiency could also produce rural economic benefits such as increased farm income, increased economic development, and less burden on the rural road networkÖ.*
>
> ***Need for Proposed Action***: *Ö the overall need for the project is the development of viable, safe, and competitive rail service offering a reliable fuel source to Midwestern utilities, which must meet increased demands for energy production and respond to a changing regulatory environment requiring cheaper, cleaner energyÖ.*

The US Forest Service Decision to be made is described in the Volume I, Chapter 2, page 1-25,26 of the FEIS.

> *The Forest Service will decide whether to issue DM&E an easement and if so, the terms and conditions, including location, of the easement.* see also FEIS, Executive Summary, E-17.
>
> *The National Forest Management Act of 1976, requires consistency between the project proposed, and the National Forest Land and Resource Management Plan (Forest Plans).* FEIS, Executive Summary, E-18. *DM&Eís project was evaluated by USFS for consistency with the guidelines of two existing Forest Plans, (Nebraska and*

Medicine Bow Forest Plans) and the National Grasslands Plan Revision (Preferred Alternative 3). Although USFS has identified Alternative C as itís preferred action alternative for this project, Alternative C would not be consistent with any of these Forest Plans.

III. MY DECISION

A. Decision

After careful review of the analysis, as described in the final Environmental Impact Statement (EIS) -Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation, Construction into the Powder River Basin, Powder River Basin Expansion Project, (Map of Alternative C, Appendix A) including serious consideration of the comments responding to the draft EIS, I have selected **Alternative C, Modified Proposed Action (Phiney Flat variation)**.

Based on the analysis disclosed in the Final Environmental Impact Statement and associated documents for the DM&E Powder River Basin Expansion Project, I am making the following three decisions:

1. I am adopting Amendment 2003-01 to the *Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision,* (Appendix E) and Amendment 2003-01 to the *Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision* (Appendix F) to accommodate construction and operation of the DM&E Railroad on NFS lands on the Thunder Basin and Buffalo Gap National Grasslands. These amendments allow a site-specific rail line across approximately 33 miles of the Thunder Basin National Grassland and approximately 6 miles of the Buffalo Gap National Grassland. The purpose of the rail line will be to transport coal from the Powder River Basin in Wyoming to eastern utility markets for national public use.

2. I will authorize a special use permit after receipt and acceptance by the Forest Service of the preliminary engineering route design as provided by DM&E, which, when issued, will provide DM&E five (5) years for the construction and completion of the new rail line and ancillary facilities on National Forest System lands in South Dakota and Wyoming.

- Due to substantial variables inherent in designing and building the Project, DM&E is unable at this time to submit a precise geographic, surveyed legal description of the railroad footprint beyond that disclosed in the Final EIS. Therefore, prior to the issuance of the final authorization or until a fully surveyed centerline of the railroad route is provided, I will first authorize this special use permit for construction of the railroad. The construction area for the temporary permit will be no less than 240 feet wide to facilitate construction area, equipment and vehicles.

- This five-year special use permit will also allow DM&E to use vehicles exceeding 26,000 lbs. Gross vehicle weight on the following National Forest System Roads (NFSR): School Creek Road (NFSR 968) and Payne Road (NFSR 973). Additionally, a portion of School Creek Road will need to be moved and reconstructed by DM&E at its expense where the railroad footprint overlaps the existing road.

- I will also issue additional special use permits allowing DM&E to use NFS roads to access construction sites. These separate authorizations may require site-specific analysis that will tier to the EIS for this Project. DM&E Railroad and the Forest Service have identified these road systems or road segments necessary for the construction and operation of the railroad. A special use application for the use, construction, reconstruction, and decommissioning (where appropriate) of these roads is being prepared by DM&E.

Terms of the Forest Service 2700-4 Special Use Permit, Clause III.A., state: ì Compliance with Law, Regulations and other Legal Requirements. The Holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., The Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as other public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

3. At the completion of railroad construction and termination of the five-year special use permit, I will issue an authorization allowing DM&E to operate and maintain the new railroad across portions of the Thunder Basin National Grassland in Wyoming and the Buffalo Gap National Grassland in South Dakota. This authorization will be issued for a term of up to fifty years and will provide a rail line corridor of no less than 100 feet on either side of the centerline of the track. The width of the authorization shall be varied to only as wide as necessary to accommodate cut and fill areas essential to the operation of the rail line track.

My decision incorporates and includes the following conditions applicable to National Forest System lands and resources to the extent allowable by law:

- All environmental conditions required by the Surface Transportation Board in their decision of January 30, 2002 (incorporated by reference);

- All mitigation measures required by the Forest Service in the Mitigation Plan incorporated into this Decision as Appendix B, and any future mitigation that may be developed as necessary by the Forest Service, due to changed circumstances or new information;

- The conditions for the protection of Threatened and Endangered Species as described in the U.S. Fish & Wildlife Service Biological Opinion, incorporated into this decision as Appendix C;
- The required mitigation measures and conditions of the U.S. Army Corps of Engineers Permit under Section 404 of the *Clean Water Act* (33 U.S.C 1344) allowing for dredging and filling activities within the waters of the United States (incorporated by reference) and;
- All required mitigation measures and conditions of the Programmatic Agreement and Identification Plan for Archaeological Resources (Appendix D), fully executed by the State Historic Preservation Offices of Minnesota, South Dakota, and Wyoming.

My decision is contingent upon the DM&E Railroad obtaining all necessary Federal, State and local permits, certifications, easements, rights-of-ways or other authorities necessary to construct, operate and maintain this new railroad as required by the regulatory agencies with decision-making authority relevant to this action.

B. Rationale for Choosing The Selected Alternative

I considered relevant planning documents such as the *Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision* and the *Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision*. I considered public comments received during the public involvement process as well as comments expressed through appeals of preceding decisions in the project area. I have concluded that my decision is consistent with all applicable laws, regulations, policies, and is in the publicís interest.

I ensured that my decision considered President Bushís National Energy Policy, ì[t]here is a need to eliminate bottlenecks in the coal transportation system.î President Bushís National Energy Policy, at 7-16. Unfortunately, although ì[d]emand for clean coal from Wyomingís Powder River Basin is expected to increase because of its environmental benefits[,]î that demand may remain unsatisfied because ì rail capacity problems in the Powder River Basin have created a bottleneck in the coal transportation system.î

The Project will help alleviate this bottleneck by providing a rail line running east and west (as opposed to the other two rail lines which presently run north and south) which will help satisfy the demand for clean-burning PRB coal in mid-western and eastern states. The addition of a third carrier into the Powder River Basin will also increase the rail systemís capacity to transport coal while also increasing competition, thereby lowering the transportation costs (Final EIS, Volume I, Chapter 2, page 2-18). Transportation costs account for 30 to 50 percent of the price of coal delivered to utilities. Further, the Project will provide more direct, and thus more efficient, access to important mid-western and eastern utility markets.

The coal produced in the Powder River Basin is of lower sulfur content than that currently used by most electric utilities in the Midwest. The increase in supply of low sulfur coal that the DM&E Railroad will transport will allow mid-western and eastern utilities to more easily satisfy the requirements of the Clean Air Act. The reduction in sulfur dioxide that will result from the burning of low sulfur coal will contribute to reduced air pollution and acid rain problems in mid-western and eastern states.

In addition to the benefits the DM&E Railroad will provide in terms of Americaís energy independence, DM&E Railroad will continue serving agricultural markets in South Dakota and Minnesota that otherwise would no longer be served without approval of the Project. The service to these existing customers will continue and improve as a result of the upgrade to the existing system, and safety problems that currently plague the DM&Eís aging existing infrastructure will be eliminated.

Prior to making my decision, I also carefully considered the results of the analysis presented in the Environmental Impact Statement and the concerns expressed by Agencies, individuals, and organizations requests for input. I used the following rationale in my thought process as I came to my decision:

In managing the National Forests and National Grasslands, the Forest Service considers and balances many competing concerns and interests. In the planning process, the Forest Service must ensure that forest plans ìprovide for multiple use and sustained yield of goods and services from the NFS in a way that maximizes long term net public benefit in an environmentally sound manner.î 36 C.F.R. ß 219.1(a). In satisfying this requirement, the Forest Service must coordinate its planning and decisions with the efforts of other federal, state and local agencies, as well as Indian tribes. 36 C.F.R. ß 219.1(b)(9). Further, the Forest Service must manage the Forests and Grasslands in a ìmanner that is sensitive to economic efficiency,î and responsive to ìchanging economic conditions of land and other resources and to changing social and economic demands of the American people.î 36 C.F.R. ß 219.1(b)(13) & (14). Finally, the Congressional Act creating these Grasslands specifically requires the Forest Service to manage the Grasslands to provide for ìdeveloping energy resources.î 7 U.S.C. ß 1010.

The Project EIS and the Forest Serviceís Technical Report fully analyzed the adverse environmental impacts that could result from the Project, including impacts to riparian habitats, wetlands, grazing resources, wildlife, alteration of the landscape, and loss of open space, among others. These potential impacts must be considered in light of the Forest Serviceís overall management goals and objectives. I am satisfied that the analysis process fully apprised me of the potential environmental impacts as well as potential benefits, allowing me to make a fully informed and balanced decision.

C. Effects of My Decision

The concept of ìmultiple use and sustained yieldî requires me to carefully consider all decisions that might impact NFS land resources. Just as the Forest Service cannot administer every acre for mineral resource extraction and development, it also cannot seek to administer

NFS lands with an overriding goal of absolute environmental protection and preservation. Congress has mandated that the Forest Service allow for multiple uses in a fashion that protects the resources and best serves the public interest.

The DM&E Project presents a combination of considerations not often experienced by the Forest Service. The construction of almost 280 miles of new rail line, combined with the reconstruction of 598 miles of existing line, requires substantial cooperation among federal, state and local agencies. Six federal agencies have jurisdiction over some portion of the Project. In addition to the approvals required from the STB and Forest Service, the Project will require an authorization across lands administered by the Department of the Interiorís Bureau of Land Management and Bureau of Reclamation; permits from the U.S. Army Corps of Engineers to fill jurisdictional wetlands; certifications from the involved states to insure water quality standards are met; possibly a permit from the U.S. Coast Guard to reconstruct a bridge across the Missouri River; and consultation by all these federal agencies with the U.S. Fish & Wildlife Service to ensure that no federal action jeopardizes the continued existence of any federally-listed threatened or endangered species. The sheer size of the Project and the relationships between the various federal agencies, and the approvals required of each, causes each federal agency to consider issues, impacts, and alternatives not considered where an agency acts on its own. Although one alternative may minimize or eliminate localized impacts under the jurisdiction of a single agency, that same alternative may result in substantially increased impacts when the Project is considered as a whole.

Consequently, in choosing Alternative C, I considered a broad range of issues, impacts and concerns that might not otherwise have influenced the decision-making process. This consideration of a broad range of issues ensures that my decision will best serve the public interest. This included my review of Chapter 4, Environmental Consequences, Volume VIII-B, Appendix L, of the Draft EIS, which identified NFS lands, resources and values that would be affected by this decision. The following impacts were determined from that analysis:

Resource Affected	**Anticipated Effects***
Socio-economic Resources	DEIS, Volume VIII-B, Appendix L, p. 4-3 summarizes direct and indirect construction employment, earnings and tax revenues from the new railroad in South Dakota and Wyoming. South Dakota ñ 992 Direct jobs 1282 Indirect Jobs $77.6 million earnings $8.3 million taxes Wyoming - 852 Direct Jobs 634 Indirect jobs $47.8million earnings $6.6 million taxes In addition to the construction related economic benefits to the local communities, it is estimated that an additional 45 new jobs at the Wyoming coal mines and 636 indirect jobs associated with this project.

Resource Affected	Anticipated Effects*
Environmental Justice	None of the alternatives were anticipated to result in a disproportionate share of the negative environmental impacts on minority or low- income communities. Therefore, issues of environmental justice should not be a concern for the new railroad.
Transportation	Potential impacts for all action alternatives during construction would include the following: increased traffic volume on area highways and roads, accelerated deterioration of public road surfaces, increased road maintenance requirements, increased likelihood of traffic accidents, vehicle-person and vehicle-animal collisions, increased speeding. Alternative C would cross 17 grassland roads. Eleven of these roads would be crossed on Buffalo Gap NG and 6 on Thunder Basin NG. (Phiney Flat variation) Dispersed traffic will mitigate some of the potentially adverse effects. A transportation plan will be required prior to construction.
Land Use	Land Use would be converted from existing use to a rail bed. Based on significance criteria listed on page 4-8, the project is anticipated to result in significant direct and indirect adverse impacts to land use by degrading and precluding existing uses affecting adjacent property or by inducing health risks, nuisance or annoyance where none previously existed. Alternatives B and C are expected to have the least significant effect to land use of all action alternatives. Rangelands are the predominant lands converted to railroad use.
Recreation Resources	The vast majority of NFS lands crossed have Recreation Opportunity Spectrum (ROS) classifications of roaded natural, rural or urban. An operating railroad would be compatible with this ROS designation. However the sights and sounds may displace recreationists from these ROS areas. Direct and indirect impacts to recreation users will be visual, noise, and night light pollution. Railroad operations will also degrade the feeling of vastness, remoteness, solitude and quiet. The visual experiences that include night sky viewing and a natural appearing, primitive background will be impacted.
Inventoried Roadless area	Although Alt C Modified does not cross the Red Shirt Inventoried Roadless Area (IRA) which is recommended for wilderness on the Buffalo Gap National Grassland, significant noise impacts from the operating railroad are expected in the area.
Visual Resources	The railroad is anticipated to cause significant impacts to visual resources because it would be a scenically dominant feature. There are an estimated 2.1 miles of railroad corridor located in a management area with scenic integrity objective of High. Scenic Integrity Objectives are guidelines and may be waived in accordance with project level environmental analysis. Please see the *Consistency with the Forest Plan* section of this Record of Decision.
Cultural and Historic Resources	Cultural and Historic Resources will be identified and evaluated pursuant to the Programmatic Agreement, Appendix D to this document. Cultural and Historic Resources will be protected according the Federal and State law.
Geology and Paleontological Resources	This project would cross a total of 138.5 miles of the Pierre Shale and Fort Union formations(not all located on NFS lands). The potential for slumps and

Resource Affected	Anticipated Effects*
	landslides would be high where the project crosses steep slopes or where cutting or loading of slopes may cause sliding. The Forest Service requires Class III Paleontology Field surveys where the project crosses a Probable High Yield Classification (PHYC) area. Subsurface Paleontological. Resources could be revealed during construction and excavation of the project and would offer a unique opportunity to discover new specimens.
Water Resources Wetland and Riparian Resources	The greatest area of concern for impacts to surface water is sedimentation resulting from construction related runoff. The EPA requires a NPDES permit whenever storm water discharge results in disturbance to 5 acres or more. All perennial streams crossed in South Dakota and Wyoming would be located on private lands. The selected alternative was developed to reduce stream crossings and stream channel alternations. Water quality standard certificates from South Dakota and Wyoming may be needed.
Soil Resources	Construction of the project could adversely affect soils in several ways. The most serious effects include increased soil erosion and loss of soil productivity. Impacts to soil productivity from construction of this project would be long-term. This alternative is the shortest route alternative and the least amount of soil is disturbed. There would also be fewer areas affected that have high water erosion hazard.
Vegetation Resources	No National Wetland Inventory (NWI) wetland types would be crossed on NFS lands by this project in S. Dakota. Approximately .18 miles would be crossed on NFS lands in Wyoming, consisting of .04 miles of wet meadow and .05 miles of aquatic bed. The vast majority of vegetation impacts on NFS lands are grasslands. There is approximately 1 mile of bare exposed ground, .7 miles of croplands and pastures, and .3 miles of deciduous woodland.
Grazing Resources	Forty-three grazing allotments would be affected on NFS lands in Wyoming and 11 allotments on NFS lands in South Dakota by fragmentation of the pastures and disruption of operations. Mitigation measures will be implemented to insure potential allotment impacts outside the easement area are either temporary or short-term.
Threatened &Endangered Species and Special Status Species	Short-term impacts due to construction include mortality by field vehicles, mortality by construction machinery, avoidance by species of habitats near construction sites and/or temporary habitat loss, and potential short-term degradation of habitats. The Biological Opinion from the FWS includes direction to protect listed and proposed species. Forest Plan standards and guidelines along with mitigation measures in the project mitigation plan will minimize impacts.
Wildlife and Aquatic Resources	Direct impacts are related such as effects of habitat fragmentation on interference with life history functions. There will be indirect impacts related to increased human population and increased use in the area. Those wildlife species that will likely be impacted include raptors, sage grouse, mountain plover, swift fox, and big game, thus requiring a Plan amendment to standards for both TBNG and BGNG.
Management Indicator	There will be indirect impacts related to increased human population and

Resource Affected	Anticipated Effects*
Species and Forest Sensitive Species	increased use in the area. Those Management Indicator Species and Forest Sensitive Species that will likely be impacted are found in DEIS-Volume VIII-B, Appendix L Chapter 4, page 4-83, Table 4-27, and would include Mountain plover, swift fox, and certain raptors, thus requiring a Plan amendment to standards for both TBNG and BGNG.

* DEIS-Volume VIII-B, Appendix L Chapter 4 is the source for information in this table.

D. Changes Between Draft and Final

Subsequent to the end of the period open to comments on the Draft EIS, the Interdisciplinary Team reviewed each of the letters commenting on the draft and consolidated the concerns with those received from the previous scoping efforts related to this project. Intensive review of this summary did not identify any new issues, any need for additional data, or any need for additional analysis. The draft EIS was found to be suitable, with some editorial corrections and some clarification added.

Upon consideration of all these issues, and consistent with the Forest Serviceís mandate to administer its lands in a fashion that provides for multiple use and sustained yield, I have determined that **Alternative C, Modified Proposed Action (Phiney Flat variation)** best serves the competing issues and concerns presented by the Project proposal.

IV. PUBLIC INVOLVEMENT

On March 27, 1998, the STB, as lead agency, published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the Federal Register for the Powder River Basin Expansion Project. On April 28, 1998, DM&E submitted a Special Use Application to the Forest Service for an authorization to cross portions of the Buffalo Gap National Grassland in South Dakota and the Thunder Basin National Grassland in Wyoming with a new rail line.

Between April and July 1998, the STB and the other cooperating federal agencies, including the Forest Service, conducted 14 public and agency scoping meetings in the three states affected by the project. More that 1,000 members of the public and representatives from more than 30 federal, state, tribal, and local agencies participated in these meetings. Over 5,000 written comments and 600 comment forms were submitted to the STB.

On August 8, 1998, STB published an amended Notice of Intent to prepare an EIS in the Federal Register that identified all cooperating agencies, including the Forest Service, participating in the analysis and the scope of the analysis to be undertaken.

On September 27, 2000, the STB and the five cooperating agencies completed the Draft EIS for the Project and made it available to the public. The Draft EIS consisted of over 5,000 pages of analysis, covering three states and portions of two National Grasslands, as well as other federal, state and private lands. After the release of the Draft EIS, 90 days were provided to the public to comment on the

analysis provided therein. In response to requests from the public, the cooperating agencies agreed to extend the comment period by an additional 60 days, ending on March 6, 2001, (Federal Register December 22, 2000, Volume 65, page 80987). The comment period yielded approximately 8,600 written comments. In addition, the cooperating agencies hosted 12 joint public meetings in the three states of Wyoming, South Dakota and Minnesota that were attended by over 1,700 persons. After analysis of the public comments received, the Final EIS was completed and made available to the public on November 19, 2001.

V. ALTERNATIVES

A. Selected Alternative: Alternative C ó Modified Proposed Action, (Phiney Flat variation)

The Surface Transportation Board, in their decision of January 30, 2002, gave approval to DM&E Railroad to construct and operate a new rail line as described in Alternative C, Modified Proposed Action, (Phiney Flat variation) of the Final EIS for the Powder River Basin Expansion Project**.** In addition to this new construction, DM&E Railroad will comprehensively upgrade and reconstruct approximately 598 miles of its existing rail line originating in Wasta, South Dakota and extending to Winona, Minnesota. The total cost of new construction and reconstruction is estimated to be $1.4 billion, not including the cost of mitigation.

The decision to authorize the new construction of rail line into the Powder River Basin made by the lead agency was based on environmental analysis, and the development of environmental conditions and mitigation measures prepared jointly by the Forest Service, the Surface Transportation Board, and the four other cooperating agencies previously identified. This Alternative would involve approximately 33 miles of rail line on Thunder Basin National Grassland and approximately 6 miles on Buffalo Gap National Grassland.

Alternative C ó Modified Proposed Action, (Phiney Flat variation) would cross over the following parcels of Buffalo Gap and Thunder Basin National Grasslands:

Buffalo Gap National Grassland

Township	Range	Section(s)
T. 2 S.	R. 12 E.	Sections 9,17,20;
T. 3 S.	R. 10 E.	Sections 24,2;
T. 3 S.	R. 11 E.	Section 19;
T. 3 S.	R. 12 E.	Section 6;
T. 4 S.	R. 9 E.	Section 4;
T. 5 S.	R. 9 E.	Sections 19,31.

Thunder Basin National Grassland

Township	Range	Section(s)
T. 40 N.	R. 70 W.	Section 6;
T. 40 N.	R. 71 W.	Sections 1,12;

T. 41 N.	R. 63 W.	Sections 8,9,17,18;
T. 41 N.	R. 64 W	Section 10;
T. 41 N.	R. 69 W.	Sections 5,8,17,20,21,29,30,31;
T. 41 N.	R. 70 W.	Section 35;
T. 42 N	R. 65 W.	Sections 22,26,27,35;
T. 42 N.	R. 66 W.	Sections 23,24;
T. 42 N.	R. 68 W.	Sections 1,2,3,4;
T. 42 N.	R. 69 W.	Sections 6,18,19,29,30,32;
T. 43 N.	R. 68 W.	Section 31;
T. 43 N.	R. 69 W.	Sections 33,34;
T. 43 N.	R. 69 W.	Sections 29,30,31,32;
T. 42 N.	R. 70 W.	Sections 11,12;
T. 43 N.	R. 70 W.	Sections 11,12,14,23,24;
T. 44 N.	R. 70 W.	Section 2.

B. General Overview of Alternative C, Modified Proposed Action, (Phiney Flat variation)

Under Alternative C, Modified Proposed Action, (Phiney Flat variation), DM&E Railroad will construct approximately 280 miles of new rail line construction in a corridor approximately 200 feet wide, originating from their existing DM&E Railroad track in Wasta, South Dakota, and extending generally west across South Dakota and Wyoming, crossing Federal, State and private lands, until the new railroad reaches the coal mines located on the Thunder Basin National Grassland and in the Powder River Basin of Wyoming. The DM&E Railroad will then transport low-sulfur coal from the Powder River Basin mines to midwestern and eastern utility markets. Alternative C, [combined with Black Thunder North Mine Loop spur and North Antelope East Mine Loop spur ñcrosses approximately 39 miles of NFS lands administered by the Forest Service - approximately 6 miles of Buffalo Gap National Grassland in South Dakota, and approximately 33 miles of Thunder Basin National Grassland in Wyoming]. Alternative C, Modified Proposed Action, (Phiney Flat variation) would provide access to the following coal mines located on Thunder Basin National Grassland in Wyoming,(except where noted):

- North Antelope Mine on the south spur
- Black Thunder Mine on the west spur
- Cordero, Caballo Rojo, Belle Ayr, and Caballo Mines are located close to the north spur (all of these mines are located on private lands)

This Alternative would require amendments for the Thunder Basin National Grassland and the Nebraska Forest and Associated Units Management Plans.

See maps of this alternative in Appendix A of this Decision and Volume V, Book of Maps, of the Final EIS.

Other Alternatives Considered

1. Alternative A ó No Action Alternative

The National Environmental Policy Act (NEPA) requires that a No action Alternative be considered in all environmental documents to serve as a baseline for estimating the impacts of other analyzed alternatives. The No Action Alternative (Alternative A) would not grant an authorization to DM&E for the construction, operation and maintenance of a new rail line across NFS lands to access coal mines in the Powder River Basin. Therefore, DM&E would not be capable of undertaking the comprehensive upgrade of its existing line to allow travel by heavy-haul unit coal trains. Under this alternative, DM&E would likely cease to be an economically-viable railroad and the existing rail service to much of central South Dakota and southern Minnesota agricultural communities would cease. *See* Powder River Basin Expansion Project Final EIS at 2-6. This Alternative would not require an amendment to the Thunder Basin Grassland Land and Resource Management Plan 2001 Revision and the Nebraska National Forest and Associated Units Land and Resource Management Plan 2001 Revision. Although Alternative A would avoid all impacts to NFS land, several factors determined why I did not select this alternative.

The Surface Transportation Board determined that the new rail was necessary and best served the publicís national energy needs.

Alternative A would not meet the purpose and need for the Project. While this alone would not generally justify a decision not to select the No Action Alternative, it does provide significant support for that decision in this situation. The national interest requires that federal agencies develop opportunities to improve the countryís ability to develop and use its energy resources. An important component of Americaís energy independence is the infrastructure that allows the nationís resources to reach those citizens that depend on them. The DM&E Project will play an important role in ensuring the stability of Americaís energy infrastructure. *See id.* at 2-6 to 2-19. The No Action Alternative would not provide the public this important service and benefit.

2. Alternative B ó Proposed Action

Alternative B is the route originally proposed by DM&E in its February 20, 1998 application to the STB. Similar to Alternative C, Alternative B would provide a direct route between the coal mines of the Powder River Basin and mid-western electrical utilities, reducing transportation costs by increasing competition and providing a more efficient transportation route. In addition, the improvements on DM&Eís existing line would ensure that rail service to small markets in central South Dakota and southern Minnesota would both continue and improve.

Alternative B would cross approximately 51.9 miles of lands administered by the Forest Service, including approximately 16.3 miles of the Buffalo Gap National Grassland in South Dakota and approximately 35.6 miles of the Thunder Basin National Grassland in Wyoming. This alternative would cross two roadless areas and separate a third from the Cheyenne River in the Buffalo Gap National Grassland, and would cause potentially significant

environmental harm to the Cheyenne River valley. In addition, Alternative B would pass within 500 feet of lands on Buffalo Gap National Grassland managed as semi-primitive non-motorized.

This alternative would also pass adjacent to an inventoried roadless area on the Thunder Basin National Grassland. In addition, this alternative would impact a site designated for reintroduction of the black-footed ferret on the Thunder Basin National Grassland, listed as endangered under the Endangered Species Act.

This Alternative would require an amendment to the Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision and the Thunder Basin Grassland Land and Resource Management Plan, 2001 Revision.

Because Alternative B would cause these additional environmental harms without any corresponding environmental or public interest benefits, the Forest Service agrees with the STB determination not to select Alternative B.

3. Alternative D ó Existing Corridors Alternative

During public scoping for the EIS, numerous comments were received suggesting that DM&E should utilize existing transportation corridors in western South Dakota and eastern Wyoming to the maximum extent possible. The comments suggested that DM&E use its existing rail lines between Wall and Rapid City, and Rapid City and Smithwick, South Dakota, instead of constructing a new railroad through the Cheyenne River valley. This alternative would then require some new construction to access existing rail corridors in Wyoming, where the alternative would then travel farther north along these existing corridors before accessing the coal mines. Alternative D was developed to explore the feasibility of using these and other existing transportation corridors.

In response to comments from the Environmental Protection Agency, the STB formulated a modified Alternative D for analysis. The modified alternative would follow existing corridors to Smithwick, South Dakota, but would then join Alternative C from that point to the mines in the Powder River Basin. After conducting a full analysis of the extensive earthwork that would be required to convert DM&Eís existing line between Wall and Smithwick to a line capable of handling unit coal trains, the STB determined that both the original and modified Alternative D alignments would result in potentially severe environmental impacts without providing equally extensive environmental benefits. Further, the earthwork required to build Alternative D would substantially increase the costs of the Project. Together with the increased travel time and distance the longer route would require, Alternative D presents an economically infeasible alternative that could not be completed if chosen. Alternative D would be economically and technically infeasible because of excessive grades and curves in South Dakota that are not compatible with heavy-haul unit coal trains and a generally circuitous route in Wyoming.

Consequently, the STB determined, and the EPA concurred, that the two Alternative D alignments were not reasonable and feasible alternatives to the project. *See* Powder River Basin Expansion Project Final EIS at 3-19. Although Alternative D would avoid all potential

impacts to the Buffalo Gap National Grassland and much of the Thunder Basin National Grassland, much greater environmental damage would be caused to other non-federal land resources. This Alternative would require an amendment to the Thunder Basin Grassland Land and Resource Management Plan 2001 Revision. It would not require an amendment to the Nebraska National Forest and Associated Units Land and Resource Management Plan 2001 revision.

For that reason, I agree with the STB and EPA determinations that Alternative D is not a reasonable and feasible alternative to the project, and should not be selected by any agency with jurisdiction over the project.

Alternatives Considered But Not Analyzed In Detail

The Federal cooperating agencies also considered other alternatives to the proposed action that were not analyzed in detail. Those are:

> The ìOld Milwaukeeî Route, a defunct railroad corridor that lies predominately in the State of Nebraska; and
>
> The ìNorthern and Middle Corridorî Route, a route that would go north of the Black Hills of South Dakota to the Powder River Basin in Wyoming.
>
> These alternatives were not analyzed in detail because it was determined that neither routes met the purpose and need of the project.

VI. FINDINGS REQUIRED BY LAWS

Compliance with the National Forest Management Act

The statutes and regulations governing management of the NFS provide that all actions allowing the use and occupancy of forest lands must be consistent with the National Forest land and resource management plan for that Forest or Grassland. 16 U.S.C. ß 1604(i); 36 C.F.R. ß 219.10(e). The route proposed by DM&E would cross lands managed under two separate management plans.

The Thunder Basin National Grassland in Wyoming is administered under the *Thunder Basin Land and Resource Management Plan, 2001 Revision*. The Buffalo Gap National Grassland in South Dakota is administered under the *Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision*. Both Plans provide for land-use activities relating to public safety, health and welfare, public service improvements, and activities contributing to increased economic activity associated with NFS resources, such as oil, gas, and minerals.

The DEIS (Volume VIII-B, Appendix L) analyzed consistency of each alternative with the draft *Thunder Basin National Grassland and Nebraska National Forest and Associated Units Land and Resource Management Plans, 2001 Revisions* (*Revised Plans*) because the Final Revised Plans were not approved until July 2002. The *Revision* decisions occurred after the

STB issued its DM&E record of decision. The DM&E DEIS Draft Revised Plan consistency analysis was reviewed after the July 2002 Revised Plans decisions and determined to be representative of the Final Revised Plans with slight modifications. A consistency table that reflects this additional analysis can be found in the administrative record.

Here are the findings from the consistency analysis. **Alternative A** would be entirely consistent with the *Revised Plans*. **Alternative B** and **Alternative C Modified Proposed Action** (Phiney Flat variation) would be consistent with the two *Revised Plans* to an extent, but inconsistent for selected standards in the *Revised Plans*. **Alternative D** would be consistent with the Nebraska *Revised Plan* but inconsistent for selected standards in the Thunder Basin Revised Plan.

For the most part, **Alternative C Modified Proposed Action (Phiney Flat variation,** [Selected Alternative]) is consistent with the Revised Plans. The Revised Plans include goals and objectives and direction for resource development. The DM&E Railroad would transport mineral resources developed on NFS lands and would provide public benefit. This use would be consistent with Plan direction. However, in order to accomplish this, the Revised Plans would need to be amended because construction and operation of the railroad would deviate from specific standards in the Revised Plans. A short description of the standards I am amending and a finding of non-significant amendments follow. This project will also require deviations from guidelines in the Revised Plans. Those deviations are documented after the discussion on the Forest Plan amendments.

Forest Plans Amendments

Deviations from Standards

Standards are actions that must be followed or are required limits to activities in order to achieve Grassland objectives. Site-specific deviations from standards must be analyzed and documented in management plan amendments. (Thunder Basin National Grassland Revised Plan, page 1-9; Nebraska National Forest and Associated Units Revised Plan, page 1-10.)

This project deviates from four grassland-wide standards and three management area (MA 3.68) standards in the Thunder Basin National Grassland Revised Plan. It also deviates from two grassland-wide standards and two geographic area standards (Fall River Southeast Geographic Area) in the Nebraska National Forest and Associated Units Revised Plan.

Appendix E and Appendix F of this decision include a description of the standards, the deviations and any mitigation that will be employed to reduce expected adverse effects to specific resources.

Non-Significant Amendment

The following factors were used to determine whether a proposed change to the Revised Plans are significant or not significant, based on National Forest Management Act planning requirements. *See US Forest Service Handbook 1909.12, Ch. 5.32.*

a) Timing ñ Identify when the change is to take place. Construction of approximately 39 miles of new rail line is expected to take place sometime within the next 10 years. Impacts resulting from deviations from standards are expected to be of short duration.

b) Locations and Size ñ Determine the location and size of the area involved in the change. The location of the new rail line in Alternative C Modified minimizes impacts to existing uses and to sensitive resources. The area is small in the context of either of the Grasslands it crosses. This project will impact a narrow linear corridor. Construction on the Thunder Basin National Grassland is expected to affect approximately 930 acres while the long-term easement is expected to affect approximately 795 acres. This equates to less than 0.2 percent of the total Grassland. Construction on the Buffalo Gap National Grassland is expected to affect approximately 180 acres while the long-term easement is expected to affect approximately 150 acres. This equates to less than 0.03 percent of the total Grassland.

c) Goals, Objectives, and Outputs- Determine whether the change alters long-term relationships between the levels of goods and services projected by the forest or grassland plan. The revision of specific standards in the LRMP are not expected to alter the long-term relationship between the levels of goods and services projected in the FEIS for the Northern Great Plains Plans including the two grasslands affected by this decision. This action permits resources developed from the Thunder Basin National Grassland to be transported and used for their intended purpose. The change applies only to this situation. It should not alter the desired future condition of the other NFS lands and resources or the anticipated goods and services to be produced.

d) Management Prescription ñ Determine whether the change is only for a specific situation or whether it would apply to future decisions throughout the area. Deviations from particular standards will occur only for the area of the Powder River Basin Expansion Project rail line. Those lands not impacted by the construction and operation of the proposed rail line will continue to be managed under the existing management prescriptions, goals, objectives, standards, and guidelines in the Revised Plans.

These plan amendments are determined not to be significant. *See* U.S. Forest Service Handbook 1909.12, Ch. 5.32(3)(d).

Deviations from Guidelines

Guidelines are advisable actions that should be followed to achieve grassland or forest goals and objectives. Deviations from guidelines must be analyzed during project level analysis and documented in a project decision document, but do not require management plan amendments. (Thunder Basin National Grassland Revised Plan, page 1-9; Nebraska National Forest and Associated Units Revised Plan, page 1-10).

In addition to approving amendments to deviate from standards, I am identifying deviations from guidelines in both Revised Plans as required by those Plans. The guidelines are as follows:

Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision

Grassland-wide Guidelines

F. Fish, Wildlife, Rare Plants, page 1-16 #33; page 1-18 #49, #51, and #52; page 1-20 #71; page 1-26 # 1 and #2

Chapter 3 - Management Area Guidelines

Management Area 2.1 Special Interest Area - Scenery, page 3-8 #1; and Special Uses ñ page 3-8 #2)

Management Area 3.68 Big Game Range ñ General, page 3-20 #2 and #3; Infrastructure page 3-21 #1.

Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision

Grassland-wide Guidelines

F. Fish, Wildlife, Rare Plants, page 1-18 #46

Chapter 2 - Geographic Area Guidelines

Fall River Southeast Geographic Area

Mountain Plover (Sensitive Species, Proposed Species) p. 2-31
Any net loss of suitable and occupied mountain plover habitat as a result of prairie dog poisoning or development of new facilities within prairie dog colonies will be replaced within the year by concurrent expansion of suitable plover habitat or in some cases, any enhanced management and protection of occupied plover habitat elsewhere on or near the national grassland. The amount of habitat loss is based on the amount of suitable and occupied habitat available prior or prairie dog dispersal in the year of the poisoning or development.

Mountain Plover (Sensitive Species, Proposed Species) p. 2-31
To help reduce disturbances to nesting mountain plover, do not authorize the following activities in plover nesting areas or within 0.25 miles of plover nests from March 15 through July 31: construction, permitted recreation events, grasshopper spraying, prairie dog shooting.

Mountain Plover (Sensitive Species, Proposed Species) p. 2-32
To avoid attracting avian predators, new structures and facilities will be designed with low profiles and/or perch inhibitors. This does not apply to structures and facilities less than 4 feet in height.

A description of the guidelines and a discussion about how they deviate from the direction in the Revised Plans may be found in the project record.

Planning regulations at 36 CFR 219.19 require me to ensure viable populations of native and selected non-native species. Regional Forester sensitive species were considered and analyzed in Appendix L. Potential adverse impacts were disclosed and to the extent possible those impacts will be mitigated. Standards and guidelines from the Thunder Basin and Nebraska and Associated Units 2001 Revisions will be implemented. See Appendix B, Appendix E and Appendix F of this Decision for species specific mitigation that will be implemented in addition to or instead of those listed in the 2001 Revisions. This project may impact individuals of each of the sensitive species considered, but it is not likely to cause a trend toward federal listing or loss of viability within the analysis area, or range wide for any of these species.

Compliance With The National Environmental Policy Act
The National Environmental Policy Act (NEPA) requires all Federal agencies contemplating ìmajor Federal actions significantly affecting the quality of the human environmentî to prepare a detailed statement analyzing: (1) the environmental impacts of the proposed action; (2) any adverse environmental impacts which cannot be avoided should the action proceed; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources required should the action proceed. 43 U.S.C. ß 4332(2)(C).

The STB, as lead agency, and the Forest Service, U.S.D.I. Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Coast Guard, and U.S.D.I. Bureau of Reclamation, as cooperating agencies, prepared a comprehensive environmental impact statement on the impacts of the Project. The agencies provided 150 days for the public to comment on the Draft EIS, and received over 8,600 written comments on the project. The EIS analyzed all impacts that would directly result from the construction of 280 miles of new rail line, the rehabilitation and reconstruction of the existing DM&E rail line, as well as the potential impacts that might occur hundreds of miles away as traffic increases on the DM&Eís existing line.

In addition to its cooperation in preparation of the EIS, the Forest Service prepared its own separate Resource Technical Report and Impact Assessment for the Project. This document analyzed all potential impacts to NFS lands administered by the Forest Service and U.S.D.I. Bureau of Land Management, as well as adjacent state and private lands. This Report was included in the Draft EIS at Appendix L.

I am satisfied that this Project complied fully with the goals and policies of NEPA. The Project EIS contains a thorough and far-reaching analysis of all impacts that might result from the project. Further, the agencies provided substantial opportunity for public input and participation in the decision-making process. As the extensive comments and concerns expressed by the public demonstrate, the NEPA process fully satisfied the requirement that both the public and the federal agencies fully understand the potential impacts that might result from federal agency decision-making.

Compliance with the Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires all federal agencies to consult with the U.S. Fish & Wildlife Service (USFWS) to ensure that any action it undertakes will not jeopardize the continued existence of a threatened or endangered species or its critical habitat. 16 U.S.C. ß 1536(a)(2). The Forest Service prepared a biological assessment (BA) as an initial analysis of the potential impacts to listed species that would result from the Project (the BA was included in the Draft EIS at Appendix K and in the Final EIS at Appendix H). Upon reviewing the BA and determining that the Project was likely to adversely affect several listed species, the USFWS proceeded with a biological opinion (BO) to more fully analyze the impacts to those species (the BO was included in the Final EIS at Appendix H, and is included here as Appendix C).

The BO analyzed the potential impacts to the following species: the Bald Eagle ó listed as threatened; the Ute Ladiesí-tresses ó listed as threatened; and the Mountain plover ó proposed to be listed as threatened.[1] After analyzing the potential impacts to these species, the USFWS determined that the Project is not likely to jeopardize the continued existence of any listed species or its critical habitat. However, that determination is contingent on several conditions. First, in an effort to be proactive in protecting these species and their habitats from impacts that might result from the Project, DM&E voluntarily proposed several conservation recommendations that would be included in any authorization for the Project (See Appendix C, USFWS Biological Opinion, page 4, Conservation Measures). Further, the BO requires the Project to comply with specific reasonable and prudent measures, and terms and conditions that implement them, in order to minimize any take of listed species that

[1] The BA analyzed the potential impacts to several additional species: the Black-footed ferret; the Piping plover; the Whooping crane; the Interior least tern; the Topeka shiner; the Pallid Sturgeon; the American burying beetle; the Minnesota dwarf trout lily; the Higginís eye pearly mussel; the Winged maple leaf mussel; the Karner blue butterfly; the Prairie bush-clover; Leedyís roseroot; the Western prairie fringed orchid; the Swift fox; the Sturgeon chub; and the Black-tailed prairie dog. For each of these species, the BA determined that the Project was not likely to adversely affect the species. The ESA only requires analysis in a BO for those species that a BA determines are likely to be adversely affected by a Project.

might occur incidentally to the Project. Consultation with the U.S. Fish & Wildlife Service may be re-initiated if conditions change on NFS lands.

Compliance with the National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires all federal agencies to consider the impacts of their undertakings on historic properties and provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment on such undertakings. Consequently, prior to proceeding with any federal undertaking, the federal agency must analyze the potential impacts to historic properties and determine what means might be necessary to avoid or minimize any such impacts.

The regulations implementing Section 106 provide that a federal agency may implement a programmatic agreement to satisfy the Section 106 requirements where the federal undertaking involves complex situations or multiple actions. *See* 36 C.F.R. ß 800.14(b). The STB, in cooperation with all federal agencies with jurisdiction over the Project, including the Forest Service, completed a Programmatic Agreement and Identification Plan for the Project. The Programmatic Agreement and Identification Plan ensures that DM&E will survey the entire proposed right-of-way for historic properties prior to construction, and ensures that impacts to any historic properties that might occur in the right-of-way are avoided or minimized or mitigated. Consequently, the Programmatic Agreement and Identification Plan fulfill the requirements of Section 106 of the NHPA for the Forest Service undertaking. A copy of this Plan is attached in this Decision as Appendix B. A signed copy will be made part of the Administrative Record and will be available upon request. The authorizations granted in this ROD are contingent on DM&Eís compliance with all provisions of the Programmatic Agreement and Identification Plan.

Compliance with Other Laws and Conditions

I ensured that my decision was also consistent with all other relevant laws, regulations, and policies including but not limited to:

- Organic Administrative Act of 1897
- Multiple Use-Sustained Yield Act of 1960
- Forest and Rangeland Renewable Resources Planning Act of 1974
- Clean Air Act of 1955, as amended
- Protection of Wetlands Executive Order 11990

VII. ENVIRONMENTALLY PREFERRED ALTERNATIVE

The National Environmental Policy Act (NEPA) regulations 40 CFR 1505.2(b), requires agencies to specify the alternative or alternatives which were considered to be environmentally preferable [40 CFR 1505.2(b)]. Forest Service policy (FSH 1909.15, Section 05) defines environmentally preferable as:

ì*An Alternative that best meets the goal of* S*ection 101 of NEPA. Ö Ordinarily this is the alternative that causes the least damage to the biologi*cal, *and phys*ical *environment and best protects, preserves, and enhances historical, cultural and natural resources.î*

The goals of Section 101 of NEPA are:

1. ì Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;î
2. ì Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;î
3. ì Attain the widest range of beneficial uses of the environment with degradation, risk to health or safety, or other undescribed and unintended consequences;î
4. ì Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;î
5. ì Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of lifeís amenities; andî
6. ì Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resourcesî

After considering the alternatives analyzed in detail in the context of Section 101 of the National Environmental Policy Act as articulated above, I find that **Alternative A, No Action** meets the goals of Section 101 because it would prevent environmental impacts to a variety of resources on NFS lands. It is the environmentally preferred alternative for lands under the jurisdiction of the USDA Forest Service.

Alternative C, Modified Proposed Action (Phiney Flat variation) also meets the goals of Section 101. Without the selection of Alternative C, the existing rail line would continue to deteriorate, increasing the potential for train and train vehicle accidents. The selection of Alternative C would allow DM&E to generate the necessary revenues to rehabilitate its existing line and to provide access to the PRB by a third competitive and efficient rail carrier. Therefore Alternative C is an environmentally preferred alternative for the entire rail line.

VIII. MITIGATION AND MONITORING

This decision includes the commitment to implement measures to mitigate adverse environmental impacts. The Interdisciplinary Team reviewed all suggested mitigation and identified a list of those needed to ensure protection of Forest resources. All practicable means to avoid or minimize environmental harm from the decision have been adopted.

Mitigation measures, (to be implemented by DM&E proponent or at DM&Eís expense, unless otherwise stated) associated with this decision are located in Appendix B of this document and are as follows (in brief):

General Mitigation

- The Forest Service will develop a Land Adjustment Plan to identify solutions to the issue of isolated pieces and portions of NFS land.

Archaeological, Historical and Prehistoric Resources

- Monitor all construction sites for archaeological, historic and pre-historic resources and protect as appropriate.

Paleontological Resources

- Survey and monitor all potential paleontological areas and protect or recover as appropriate.

Transportation/Public Safety

- Develop a plan for roads needed during construction, and roads needed for access to the rail line and obtain Forest Service approval prior to ground disturbance.

Grazing Resource

- Provide water, fencing and other means of maintaining cattle herds where they are displaced by pasture fragmentation.

Soils Resource

- Salvage topsoil from construction sites for use during rehabilitation activity and ensure successful revegetation.
- Minimize sedimentation into streams and waterways, service and refuel equipment 100 feet from wetlands or waterways, and employ best management practices to control turbidity and disturbance.

Aesthetics/Visual Resource

- Paint all above-ground facilities and equipment, when that action would not conflict with safety regulations or operational requirements. Minimize night lighting pollution and bury all telephone and power lines if they are 33 kV or less, where practicable.

Wildlife and Aquatic Resource

- Replace sage grouse habitat within º mile of the railroad as defined in Mitigation Plan.
- Survey raptors nests prior to construction. All impacted nests removed, abandoned or destroyed by construction, operation or maintenance will require alternative nest replacement or compensation as required by the U.S. Fish and Wildlife Service and the Forest Service.
- Implement restrictions on construction activity within the minimum distance of active raptor nests and winter roost areas to specified seasonal windows.
- Bury animal carcasses to discourage wildlife from entering the railroad corridor.
- Replace Clean Water Act Section 404 aquatic habitat where stock ponds are changed to water tanks.
- Design and construct live drainage crossings and culverts so they will not impeded fish movement.
- Replace cottonwood/riparian and other woody areas onsite that are removed or damaged during construction, or when not possible, replace off-site.

- The Forest Service will develop wetland mitigation (at the expense of the proponent) for Antelope Creek on TBNG with U.S. Army Corps pf Engineers.

Existing Infrastructure
- Mitigate any impacts to pre-existing uses under permit.

Fire Prevention
- Consult with the Forest Service with regard to its fire prevention plan and work with local and state agencies relevant to fire prevention, control, and costs associated with those activities.

IX. IMPLEMENTATION AND APPEAL PROVISIONS

Implementation Date

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215, ìNotice, Comment and Appeal Procedures for National Forest System Projects and Activities,î dated November 4, 1993 (36 CFR 215 dated June 4, 2003, does not apply). A written Notice of Appeal must be submitted within 45 days beginning the day after notice of this decision is published in the Denver Post, Denver, Colorado, which is the newspaper of record. The written notice of appeal shall be sent by Fed Ex or UPS to:

USDA Forest Service
Attn: Ecosystem Management Coordination, Appeals Staff
201 14th Street, S.W.
3rd Floor, Central
Washington, DC 20090-6090

Note: If appeals are sent through the Post Office, it could take 30 days to reach this destination due to Anthrax screening procedures.

It is the appellantís responsibility to provide written evidence and rationale to show why my decision should be remanded or reversed. An appeal submitted to the Appeal Deciding Officer becomes part of the appeal record. An appeal must meet the content requirements of 36 CFR 215.14, which include:

- State that the document is an appeal filed pursuant to 36 CFR 215;
- List the name and address of the appellant and, if possible, a telephone number;
- Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

- Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;
- State how the Responsible Officialís decision fails to consider comments previously provided, either before or during the comment period specified in 36 CFR 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

X. CONTACT PERSON

Tom Florich, Program Leader, Lands and Minerals
Medicine Bow-Routt National Forests and Thunder Basin National Grassland
2468 Jackson Street
Laramie, Wyoming 82070
(307) 745-2300

/S/Rick D. Cables
Rick D. Cables, Regional Forester,
Deciding Officer

Region 2, Rocky Mountain Region,
U.S.D.A Forest Service

September 4, 2003
Date