

**APPENDIX F**  
**NEBRASKA NATIONAL FOREST AND**  
**ASSOCIATED UNITS**  
**LAND AND RESOURCE MANAGEMENT PLAN**  
**2001 Revision**  
**FOR THE**  
**BUFFALO GAP NATIONAL GRASSLAND**

**ROCKY MOUNTAIN REGION**  
**USDA FOREST SERVICE**

**AMENDMENT 2003-01**

**MODIFICATION OF MANAGEMENT DIRECTION TO AUTHORIZE A RAIL  
LINE CONSTRUCTION PERMIT AND AN AUTHORIZATION ON  
BUFFALO GAP NATIONAL GRASSLAND**

Digest: Modifies Management Direction to authorize rail line construction, operation and maintenance on Buffalo Gap National Grassland.

**Reason for Amendment**

This amendment to the *Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision*, for the Buffalo Gap National Grassland, would allow for approval of a construction permit and granting of an authorization for development of a rail line on portions of the Buffalo Gap National Grassland in South Dakota. In October 2000, the Surface Transportation Board (STB) released a draft EIS on a proposal from the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E) to expand their rail operations into the Powder River Basin. Approximately 6 miles of the project are located on the Buffalo Gap National Grassland. A Final EIS was published on November 19, 2001. The STB issued a decision on January 30, 2002.

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. This analysis concluded that there was a need for the DM&E to construct and operate a rail line across portions of the Buffalo Gap National Grasslands. It also concluded that approval of the project on NFS lands would be inconsistent, in some instances, with the standards and guidelines in the revised Land and Resource Management Plans (LRMP) for these units. LRMPs provide guidance for all resource management activities on a NFS unit. They provide management direction, standards, and guidelines, describe resource management practices, and identify overall availability and suitability of lands for resource management. Project level analyses, on the other hand, determine if a proposal is, or can be made consistent with management plan direction and guidance. Projects that cannot comply with direction in the plan must be found inconsistent with management direction, unless the direction is modified through amendment. In the later case, project approval and management plan amendment can be done simultaneously.

The DM&E rail line will traverse **Management Area 6.1**, defined as **Rangeland with Broad Resource Emphasis** for approximately 6 miles affecting approximately 180 acres for construction and 150 acres for operation and maintenance.

### **Standards to be amended**

This amendment to Plan Standards is made only for those lands identified in the DM&E final Environmental Impact Statement and Record of Decision issued by the STB, and only to those project decisions on those lands. Lands not analyzed must undergo analysis following guidelines set forth in 36 CFR 228.102 prior to any additional authorizations.

“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.” Nebraska National Forest and Associated Units page 1-10.

### **Chapter 1, Standards and Guidelines**

Two Grassland-wide standards are amended by waiving the standard entirely to allow for construction, installation and operation of the DM&E Railroad under a construction permit and an authorization. **Site-specific direction from the project mitigation plan, where it applies, will be used instead.**

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

**45.** To reduce disturbance to **swift fox** during the breeding and whelping seasons, prohibit the following activities within .25 mile of their dens from March 1 to August 31: Construction, reclamation, gravel mining operations, drilling of water wells, oil and gas operations. **Standard**

##### **Need for Waiver**

Future surveys will be necessary to identify swift fox dens in close proximity to the railroad. However, it will not be possible to restrict railroad operations within the specified dates. Some abandonment/displacement may occur if den sites are located in close proximity to the alternatives.

##### **Mitigation**

Bury animal carcasses in or remove them from the rail line right-of-way as part of its normal rail line inspection and maintenance activities, which shall occur no less than twice weekly. Animal carcasses resulting from collision with the train that are not buried shall be distributed in areas designated by the Forest Service. Although this mitigation was not designed specifically to discourage scavenging by swift fox, it could lessen the potential of the fox from wandering the railroad corridor.

#### **F. Fish, Wildlife, Rare Plants, page 1-19**

**51.** To help prevent abandonment, reproductive failure or nest destruction, prohibit development of new facilities within the minimum distances (line of sight) of active **raptor** nests and winter roost sites as specified in the following table (see page 1-19 of the Plan). **Standard**

### **Need for Waiver**

Raptor surveys have shown that there are raptor nests in relatively close proximity to the proposed project. Some of these nests are located on the National Grasslands. Operation of the rail line is expected to make some of the nest sites unsuitable for future use.

### **Mitigation**

Refer to Appendix B, *Mitigation Requirements for the (DM&E) Railroad*, page B-8: “To help reduce disturbances to nesting and wintering raptors, prohibit the construction activities within the minimum distances (line of site) of active raptor nests and winter roost areas during the dates specified in the table below...”

## **Chapter 2, Geographic Area Direction (Fall River Southeast Geographic Area)**

Two geographic area standards are amended by waiving the standard entirely to allow for construction, installation and operation of the DM&E Railroad under a construction permit and an authorization. **Site-specific direction from the project mitigation plan, where it applies, will be used instead.**

### **Mountain Plover (Sensitive Species, Proposed Species) p. 2-31**

To help maintain suitable nesting habitat for mountain plover, prohibit development of new facilities within 0.25 miles of known **mountain plover** nests or nesting areas. This does not apply to pipelines, fences and underground utilities. **Standard**

### **Need for Waiver**

The location of the rail line is severely restricted by grade. Some of the construction and authorization may occur within .25 miles of known plover nests or nesting areas.

### **Mitigation**

The Fish and Wildlife Service will develop and require mitigation to protect plover and its habitat, refer to Appendix C, *Biological Opinion* (for Wildlife Consultation) page 27, therefore the intent of the Standard for protection of known plover nests and nesting areas is met.

### **Mountain Plover (Sensitive Species, Proposed Species) p. 2-31**

To help reduce disturbances and risks 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 recreational events, grasshopper spraying, prairie dog shooting. **Standard**

### **Need for Waiver**

The location of the rail line is severely restricted by grade. Some of the construction and authorization may occur within .25 miles of known plover nests or nesting areas.

### **Mitigation**

The Fish and Wildlife Service will develop and require mitigation to protect plover and its habitat, refer to Appendix C, *Biological Opinion*, page 27, therefore the intent of the Standard for protection of known plover nests and nesting areas is met.

### **Applicability of Amendment**

This amendment is applicable to those areas within and adjacent to the corridor, which are or may be occupied and/or impacted by high to moderately high investment facilities authorized by special use permits. These specific, relatively small areas (in relation to the overall planning area) are, or may become, primarily occupied for purposes other than renewable resource production. Although these lands are included in management areas that may differ along the length of the authorization, the authorization will be managed for complementary resource objectives, where conditions permit. Where the authorization is inconsistent with existing management area standards and guidelines, mitigation will be implemented to minimize impacts and effect compliance with the *Nebraska National Forest and Associated Units Land and Resource Management Plan, 2001 Revision*, and all other applicable laws. Those lands not impacted by the construction permit and authorization shall continue to be managed under the existing management prescriptions, standards and guidelines.

### **NEPA Evaluation and Plan Amendment Significance Determination Process**

The NEPA evaluation of this proposed amendment, as called for by 36 C.F.R. Part 219, Section 219.10(f), has been performed as part of the DM&E Powder River Basin Expansion Project EIS process, for which the U.S. Forest Service is a cooperating agency, (*DM&E Powder River Basin Expansion Project Draft EIS*, Volume VIII-B, Appendix L, page 1-17). As part of the proposed plan amendment evaluation, a determination as to whether the proposed amendment is a significant or non-significant amendment to the current plan has been made and is documented in the final U.S. Forest Service Record of Decision for the Dakota, Minnesota, and Eastern Railroad Powder River Basin Expansion Project.

This amendment is consistent with the *National Environmental Policy Act* (NEPA), 40 CFR parts 1500 to 1508, and Chapters 10 and 20 of FSH 1909.15 (09/21/92). In addition, it has been determined that this amendment is a non-significant amendment under the criteria of the *National Forest Management Act* and in accordance with Forest Service Handbook 1909.12, Section 5.32.

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Date