

NORTHSTAR NEWS



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Ruling gives DM&E shot at investors

By Jon Benedict, Argus Leader
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submitted by Dan Meyer

Portions of a state law threatening to sink a \$2 billion railroad expansion were struck down in a federal court order Thursday, allowing the Dakota, Minnesota and Eastern Railroad to begin finding investors for the project.

However, U.S. District Judge Lawrence Pietsol did not give a permanent ruling on the Brookings company's suit against the state over a law it says is unconstitutional. Pietsol said his ruling was preliminary. He will make a decision after hearing more evidence and possibly a trial.

DM&E President Kevin Schieffer said the company will try to make up for lost time with its plan to extend the railroad to the Powder River Basin in Wyoming, and upgrade existing tracks in South Dakota and Minnesota.

"Where we go from here is to try to salvage this deal. The judge's ruling gives us at least enough to go out in the market with a credible legal foundation," Schieffer said.

The DM&E sued the state over a 1999 law that requires the governor's approval to use eminent domain to take land when an owner won't sell.

The company argued that requirements in the law kept the project at a standstill because the railroad needed financial backing to get eminent domain, but investors wanted to be sure the project was a go before joining.

The ruling said three of the five aspects of the law were unconstitutional, but it upheld two other conditions. The conditions in the law that were upheld were protecting landowners by

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making sure the company negotiates in “good faith” and allowing utility companies, telecommunication groups and rural water systems to cross the railroad without a fee.

Bob Mercer, press secretary for the governor, said those were the most important aspects of the law Gov. Bill Janklow pushed for tough enforcement of with the DM&E project.

“It’s a victory for South Dakota and for other states. It says that states do have the right to regulate eminent domain,” Mercer said.

Janklow said he only got involved in the project to protect utilities.

DM&E lawyer Brian Donahoe of Sioux Falls said those conditions would not be a major problem.

“I think that from a practical standpoint, those are things the railroad will clearly be able to live with, so long as the utilities don’t interfere with railroad operations,” he said.

But Piersol’s preliminary decision found several parts of the law violate the interstate commerce clause, Donahoe said. “Very clearly the judge has ruled that the state can’t regulate the Powder River Basin project,” he said.

Schieffer said the portions of the law that were problematic for the railroad were struck down.

Piersol ruled unconstitutional the requirement that the project be positive for South Dakota – something the state argued it was not. The judge said the fact alone that the railroad was going through the state was positive.

Piersol also said requiring the railroad to demonstrate financial backing was unconstitutional. He said the project’s approval by the federal Surface Transportation Board in January showed its worth.

Also in the ruling, Piersol said Janklow can be sued in federal court, but the judge agreed with the state’s lawyers that the 11th Amendment does not allow the transportation board to be sued.

The DM&E track will be used to carry low-sulfur coal from Wyoming to power plants in the Midwest and East.

Although much has been said about Janklow’s efforts to block the railroad, Mercer said the governor has always supported it.

“It’s a good project for South Dakota, but it has to be done without a shooting roughshod over people’s property and their rights,” Mercer said. “Eminent domain is a powerful tool. If you’re going to give a business that powerful tool against a landowner, you have

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The June Northstar Chapter, NRHS Meeting is our Summer Picnic, Saturday, July 20th @ 6PM @ the Newport Tower!

Take Highway 61 S to 12th St lights, turn right go across the tracks, take the 1st left (6th St) and continue south to 6th St. The tower is behind the Newport City Hall and the brown and yellow Newport Model RR Club building.

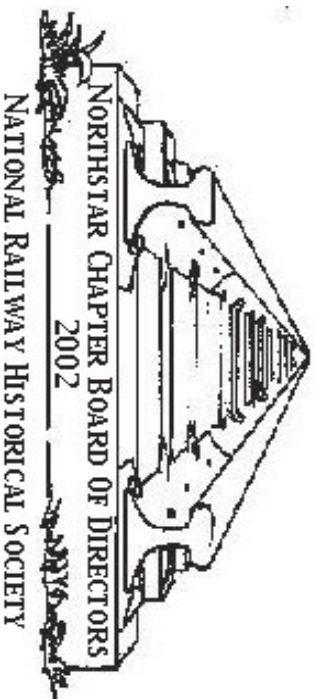


Meetings are usually the third Saturday of the month in the St. Paul Fire Department Training Center.

NEXT MEETING: August 17th @ 7pm @the St. Paul Fire Department Training Center- Program TBA in the August [Northstar News](#)



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President: Dan Meyer
763-784-8835 (Home)
Dan@Meyer.net

Vice President: Doug Johnson
Phone# n/a at time of publication

Past President: Andrew Koetz
651-776-8309 (Home)

National Director:
H. Martin Swan
Phone# will be available in next publication

Treasurer: Joe Fishbein
651-457-1610 (Home)

Secretary: David Norman
612-729-2428 (Home)

Trustee: Mark Braun
Phone# n/a at time of publication

Program Chairman:
Glen Holmberg
phone# n/a
n00yz@hotmail.com

* email contains a ZERO after the n and an 'o' following the zero.

Editor: Lauren Maiden
651-306-0352 (Home)
lauren.k.maiden@uwrf.edu

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put some requirements on it that must be met - otherwise it can be abused.”

Schieffler said he isn't sure Janklow wants the railroad.

“The governor has said so many things about this case and this project it's hard to follow the logic there,” he said. “Those are his statements. His actions have been consistently antagonistic toward this project, and it has been a real disappointment.”

If not for Janklow's efforts, Schieffler said construction probably would be under way already.

“I do not have a problem with any provision in the law that provides genuine protections for landowners. I do have a problem when someone uses the law to set themselves up as a dictator in areas where they have no legal authority to do so.”

St. Louis Steam Train Association Announces End to 1522 Operations

Submitted by Marty Swan

Wednesday, June 12, 2002, the St. Louis Steam Train Association Board of Directors met in a special Board meeting to assess the current situation and future prospects for

continued operations of locomotive SLSP 1522. The Board decided that this would be the last season of operations for the 1522 by the SLSTA. The SLSTA is an all-volunteer, not-for-profit organization established in 1986 to restore, maintain, and operate the engine.

Over the past 14 years, the engine has traveled extensively across the heartland of the US, including representing Burlington Northern Santa Fe, the successor to the St. Louis-San Francisco (Frisco) Railroad, which ordered the locomotive from the Baldwin Locomotive Company in 1926. The 1522 is one of the oldest main line operating steam locomotives in the country, and the only current example of a “Mountain” type 4-8-2 wheel arrangement in operation.

The action of the Board was in response to the spiraling costs of insurance, the limited accessibility to major railroad mainlines for excursions, required work on the engine to comply with newly enacted Federal boiler regulations, and the volunteer nature of the SLSTA's membership. “No matter how hard we try, how much our group wants to continue operating the engine, or how businesslike we attempt to run our organization, the simple fact is we can no longer sustain the economic requirements for operating and maintaining this remarkable piece of equipment in today's world,” said Robert C. Meier, President of the SLSTA.



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The 1522 is owned by St. Louis County and is a part of the collection of railroad artifacts of the Museum of Transportation. The engine and other rolling stock are leased by SLSTA from the County. SLSTA commenced rehabilitation of the engine in 1985, and has operated it on major railroads throughout the Midwest since 1988. Last year the 1522 was the motive power on BNSF's Employee Appreciation Special, running over 4000 miles from St. Louis through Missouri, Oklahoma, Texas and Kansas. The engine also ran an excursion for the National Railway Historical Society national convention.

After fifteen years of service, the Museum of Transportation's operating steam locomotive and ambassador artifact, Frisco 1522 will be featured as a major exhibit at the Museum in 2003



10:00am to 5:00pm

Railroad Fleamarket, Swap meet,

Buy-Sell-Trade

Model and Toy Trains- Railroadiana Railroad Exhibits & Displays plus guided tours of the steam locomotive, caboose and grand crossing tower.

There will also be a BNSF Railway display @ the North La Crosse Yard & Canadian Pacific Railway display at Summer Street next to Copeland Park.

Admission is \$3.00, children under 12 are free with paid adult admission. All proceeds go to maintain and restore the La Crosse Short Line Railroad.

For more information, or vendor contract, please send a large S.A.S.E to:

**The 4000 Foundation, Limited
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**La Crosse, WI 54602-3411
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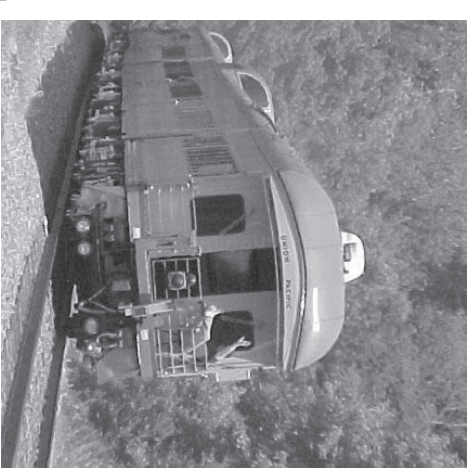
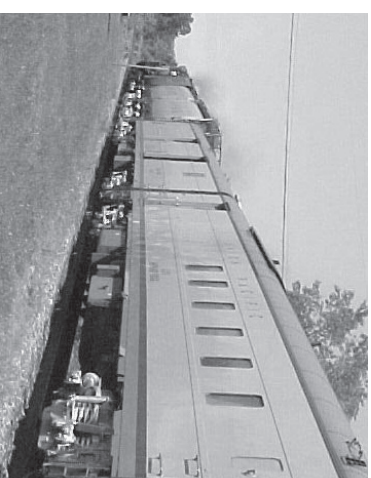
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Chasing the Challenger --

Photos and Story Submitted by Lauren Maiden

While many railfans already know the thrill of the chase and have spent much time chasing the trains they love, my first experience 'chasing' happen just earlier this month. Cy Svobodny, picked up my dad, Joe Maiden, and I early on the morning of Thursday, June 20, 2002, to meet the UP Challenger in Owatonna, MN. (I say early because for those who don't know me, anything before 11am is EARLY!)

I won't bore you with all the sordid details, but I will tell you--if a picture is worth a thousand than here are several thousand of my words.



*Making tracks to Owatonna- (Top Right)
Steaming on thru Inver Grove Hgts to South St. Paul
(Above Left)
Nearly to South St. Paul to turn around and park
(Middle Right)
Waving from the best seat in the house-or should that be train~ taken in IGH (Bottom Right)*

