



AP FILE PHOTO

A Dakota, Minnesota and Eastern train heads west on tracks near Wendte on Oct. 13, 2002. A federal appeals court has ruled against state provisions that sought to regulate railroads that take land from unwilling owners. The decision is a victory for the DM&E, which seeks to extend its rails to coal fields in Wyoming. Lawsuits have delayed the project.

Ruling moves railroad's plans forward

DM&E wins use of eminent domain in S.D.

BY JOE KAFKA
Associated Press

PIERRE — Some state provisions regulating railroads that resort to forcible acquisition of private land in South Dakota discriminate against interstate commerce and violate other federal laws, the 8th U.S. Circuit Court of Appeals has ruled.

But the federal court refused to overturn other railroad restrictions passed by the 1999 state Legislature over the objections of the Dakota, Minnesota and Eastern Railroad.

The decision deals with a December 2002 ruling by U.S. District Judge Lawrence Piersol, of Sioux Falls, who issued an order

preventing state officials from fully enforcing a law that placed several new restrictions on railroads.

A challenge to the law was filed by the DM&E, which wants to extend its line to Powder River Basin coal fields in Wyoming and run coal eastward on trains across South Dakota and Minnesota.

DM&E officials said the 1999 law dealing with eminent domain, or the legal process of forcing unwilling people to sell their land, is an illegal impediment to its proposed \$2 billion expansion and would make it virtually impossible to complete.

Kevin Schieffer, DM&E president, said Wednesday the railroad would not appeal the 8th Circuit decision. Neil Fulton, a lawyer for the state, said state officials had not decided if they would appeal, but it did not appear likely.

Schieffer said he is optimistic



Kevin Schieffer

the railroad project will be done.

DM&E wants to rebuild about 600 miles of track and extend its line 260 miles into Wyoming coal country.

"We're past the major legal and regulatory hurdles," Schieffer said, "but I'm not taking anything for granted."

Schieffer said the railroad continues to seek investors and hopes to have financing arranged by year's end. If so, the massive construction project could possibly start next year, he said.

"That would be a best-case scenario."

However, Schieffer said actual work would not begin immediately because engineering must first be finished and there would be extensive lag time after ordering the huge amounts of steel rails and other essential materials.

"It's darned complicated," he

Towns have \$4M to plan bypass

PIERRE (AP) — Town leaders in Pierre have \$4 million dollars of federal money to spend on planning a proposed railroad bypass.

The project would reroute Dakota, Minnesota & Eastern trains around the capital city if the railroad goes through with the expansion project.

The federal money has been sent to the South Dakota De-

partment of Transportation and the state and city signed an agreement Tuesday stating how the money will be used.

The city is also working with a Washington consultant to secure \$80 million for the actual bypass around Pierre and Fort Pierre. Pierre Mayor Dennis Eisnack said that plans call for the project to receive \$40 million each of the next two years.

said. "There's a lot of ramp-up things to get ready. But the jobs would start almost immediately. There would be literally thousands engaged pretty quickly."

Appealing Piersol's ruling against several provisions of the new law, state lawyers argued that South Dakota's sovereign immunity as a state bars federal courts from interfering with essential regulation of eminent domain.

The appeals court did not agree. "This lawsuit does not involve lands that South Dakota owns, nor does it challenge the state's power to take land by eminent domain," wrote 8th Circuit Chief Judge James Loken.

Piersol's injunction against the state was proper because it brings the state's regulatory scheme into compliance with federal law, the appeals court decided.