

# DIVIDER

STATE OF NORTH DAKOTA  
INFORMATION TECHNOLOGY DEPARTMENT  
SFN 2053 (4-2002)

## DESCRIPTION

**RR-04-202**  
**Burlington Northern and Santa Fe Railway Company**  
**Antelope Valley Station to Zap, ND - 3.36 Mile**  
**Abandonment** 04  
**Filed 4/22/2004**      **Closed 10/20/2005**

**BNSF**



**SIDNEY L. STRICKLAND, JR.**  
*Associate General Counsel*

**The Burlington Northern and  
Santa Fe Railway Company**

700 13<sup>th</sup> Street NW, Suite 220  
Washington, DC 20005-5915  
(202) 347-8667 - Telephone  
(202) 347-8675 - Fax  
Sidney.Strickland@BNSF.com

**VIA UPS OVERNIGHT MAIL**

December 28, 2004

Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 420X); The Burlington Northern and Santa Fe Railway Company ("BNSF") Abandonment between Antelope Valley, North Dakota and Zap, North Dakota**

Dear Secretary Williams:

On May 17, 2004, BNSF filed a Notice of Exemption seeking authority to abandon or discontinue service of a 3.36-mile line of railroad between railroad milepost 77.14 near Antelope Valley Station, in Mercer County, North Dakota and railroad milepost 80.50 near Zap, in Mercer County, North Dakota. The line traverses United States Postal Service Zip Codes 58580 and 58523. An Interim Trails Use Railbanking Agreement, dated December 28, 2004, was entered into between BNSF and the City of Zap, in lieu of consummation of abandonment.

Please acknowledge receipt of this letter by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

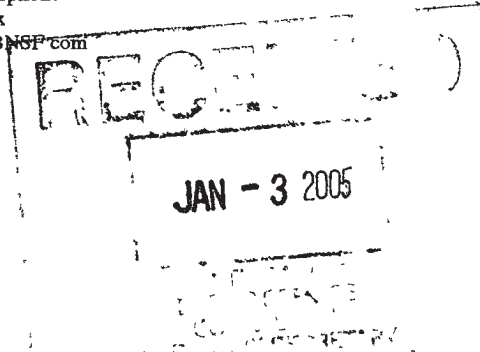
Ten (10) additional copies of this letter are enclosed for the Board's use and distribution

Sincerely,

Sidney L. Strickland, Jr.

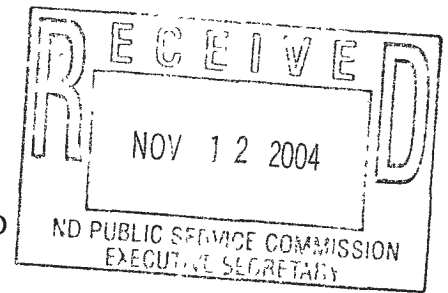
SLS/js

cc: North Dakota Public Service Commission  
North Dakota Department of Transportation  
Peter Rickershauser  
Jerome Johnson  
James Gallegos  
Richard Batie  
Randy Acosta  
Clarence Olszewski (City of Zap)  
Gregory Lange (City of Zap)  
Rail Services Update



35222  
DO

SERVICE DATE – NOVEMBER 9, 2004



SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No AB-6 (Sub-No 420X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY—ABANDONMENT EXEMPTION—IN MERCER COUNTY, ND

Decided November 8, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 3.36-mile line of railroad between milepost 77.14 near Antelope Valley Station and milepost 80.50 near Zap, in Mercer County, ND. Notice of the exemption was served and published in the Federal Register on June 4, 2004 (69 FR 31656).

By decision served July 2, 2004, the exemption was made subject to the condition that, prior to beginning salvage activities, BNSF submit site forms for the bridges and any historical sites and the final cultural resources report to the State Historical Society of North Dakota (SHPO). By letter dated October 4, 2004, BNSF has requested that the historic preservation be removed. In support of its request, BNSF attached a letter, which included an indication by the SHPO that BNSF prepared and submitted the Class I and Class II Cultural Resources Inventories, which the SHPO found acceptable, as well as an indication by the SHPO that it would concur with a determination that no historic properties will be affected by the abandonment. Therefore, SEA recommends that the section 106

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Decision

by Surface Transportation Board

11/12/2004

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condition imposed in the July 2, 2004 decision be removed<sup>1</sup> Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources

It is ordered

1 This proceeding is reopened

2 Upon reconsideration, the section 106 historic preservation condition imposed in the July 2, 2004 decision is removed

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<sup>1</sup> In that decision, the city of Zap was authorized to negotiate an interim trail use/rail banking agreement with BNSF, pursuant to section 8(d) of the National Trails System Act, 16 U S C 1247(d) The negotiation period is scheduled to expire on January 2, 2005 The decision also imposed environmental conditions that required BNSF to (1) during salvage activities, revegetate areas impacted by salvage activities with species native to the areas; (2) during salvage activities, follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body, (3) ensure that salvage activities associated with the proposed abandonment do not impact safety by affecting any 100-year floodplains during salvage activities and (a) leave the roadbed along with drainage culverts and structures in place, and (b) if the wood timber bridge spanning Spring Creek within the City is removed, (i) remove components to the ground level above the water line and to the stream bed below the water line, and (ii) leave no bridge components in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream, and (4) provide the National Geodetic Survey (NGS) with 90 days' notice prior to disturbing or destroying any identified geodetic station markers, and consult with NGS to plan their relocation. Additionally, by decision served August 3, 2004, the proceeding was reopened and the exemption was made subject to the condition requiring that BNSF shall consult with the North Dakota Department of Health Environmental Health, Environmental Health Section, regarding any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during salvage. Those conditions remain in effect

3 This decision is effective on its service date

By the Board, David M Konschnik, Director, Office of Proceedings

Vernon A Williams  
Secretary

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423-0001**

**OFFICIAL BUSINESS  
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North Dakota Public Service Commn  
Secretary To Commission  
State Capitol Bldg -- 12Th Floor  
Bismarck, ND 58505 US



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# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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Susan E. Wefald  
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TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

### MEMORANDUM

TO: Greg Lange

FROM: Bill Binek

DATE: August 25, 2004

RE: STB Docket No. AB-67 (Sub-No. 420X)  
PSC Case No. RR-04-202,

Greg:

Attached is a copy of the most recent order from the Surface Transportation Board regarding BNSF's abandonment of railroad track in Mercer County, North Dakota. My contact person with BNSF is Brian Sweeney. Brian's phone number is (651) 298-2458, fax number (651) 298-7352, and e-mail is [Brian.Sweeney@bnsf.com](mailto:Brian.Sweeney@bnsf.com).

Please call me if you need further information. My phone number is (701) 328-4088.

Sincerely,



William W. Binek

### RICHARDSON, LANGE & DONOVAN PLLP

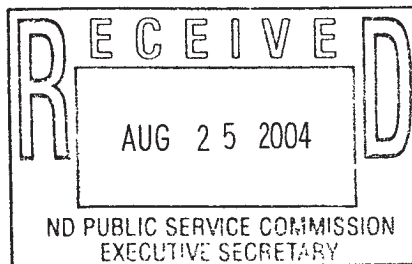
JOHN RICHARDSON  
GREGORY L. LANGE  
PATRICK A. DONOVAN

ATTORNEYS AT LAW  
P.O. BOX 488  
206 CENTRAL AVE. N.  
HAZEN, NORTH DAKOTA 58545

e-mail. hazenlaw@westriv.com  
(701) 748-2206  
FAX (701) 748-6200

#### FAX COVER SHEET

DATE: August 24, 2004  
TO: Bill Binek  
FAX NO: (701) 328-2410  
FROM: Greg Lange  
RE: Case No. RR-04-202



Dear Bill:

The Mercer County Water Resource District is considering a rail banking request to preserve for recreational use the BNSF Railroad which runs along Spring Creek. A copy of the draft request follows. It should make reference to the STB number. Does your file show that number?

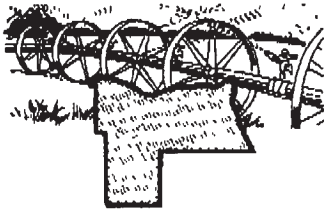
Please provide me with contact information for the person at BNSF so that we can open up negotiations with them. Thank you.

Sincerely,

Gregory L. Lange  
GLL/ll

THE INFORMATION CONTAINED IN THIS MESSAGE IS ATTORNEY/CLIENT PRIVILEGED AND INTENDED FOR THE USE OF THE INDIVIDUAL(S) NAMED ABOVE. IF THE RECEIVER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY CALLING 701-748-2206 COLLECT AND RETURN THE ORIGINAL MESSAGE TO US. THANK YOU.

ORIGINALS:      x   NOT SENT  
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# Mercer County Water Resource Board

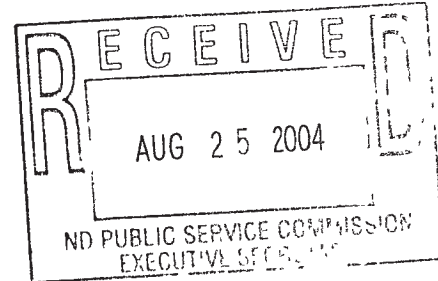
Ph. 701-748-2206

Fax 701-748-6200

P.O. Box 488  
Hazen, ND 58545

August 24, 2004

Mr Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K St., NW, Rm 711  
Washington, DC 20423



Re: Burlington Northern & Santa Fe Railway Company  
ND Public Service Commission Case No RR-04-202

Dear Mr. Williams

This comment is filed on behalf of the Mercer County Water Resource District which is a political subdivision interested in the development of water resources, which is hereinafter referred to as "Commenter"

We received notice on April 27, 2004 from the NDPSC that BNSF Railroad was considering the abandonment of 3.36 miles of track, being milepost 80.50 to milepost 77.41, in Mercer County, North Dakota. While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between milepost 80.50 and milepost 77.41.

## A Public Use Condition

Commenter requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment.

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. The justification for this condition is that the rail corridor in question is along Spring Creek and would make an excellent recreational trail. In addition, the corridor provides important wildlife habitat and its preservation as a recreational trail is consistent with that end. The time period sought is 180 days from the effective date of the abandonment.

authorization Commenter needs this much time because we have not had an opportunity to complete a trail plan or commence negotiations with the carrier.

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

#### B Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request

#### STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U S C §1247(d), and 49 C.F.R. §1152.29, Mercer County Water Resource District is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by Burlington Northern Santa Fe Railway Company.

The property, known as the Antelope Valley Spur extends from railroad milepost 80.50 west of Zap, North Dakota to railroad milepost 77.14 a distance of 3.36 miles in Mercer County, North Dakota. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. [STB No. Unknown].

A map depicting the right-of-way is attached.

Mercer County Water Resource District acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon Burlington Northern Santa Fe Railway Company, by U S Mail, postage prepaid, first class, this \_\_\_\_ day of \_\_\_\_\_, 2004

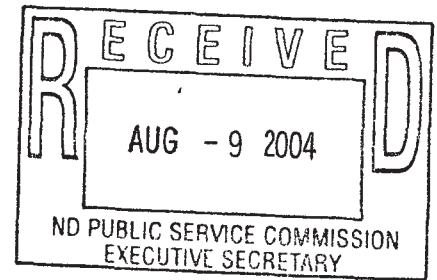
Respectfully submitted,

Gregory L. Lange  
Secretary,  
on behalf of the Mercer County Water Resource District

GLL/ll

34913  
DO

SERVICE DATE - AUGUST 3, 2004



SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No 420X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY—ABANDONMENT EXEMPTION—IN MERCER COUNTY, ND

Decided: July 30, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 3.36-mile line of railroad between milepost 77.14 near Antelope Valley Station and milepost 80.50 near Zap, in Mercer County, ND. Notice of the exemption was served and published in the Federal Register on June 4, 2004 (69 FR 31656). The exemption became effective on July 6, 2004.

By decision and notice of interim trail use or abandonment (NITU) served on July 2, 2004, the proceeding was reopened and the exemption was made subject to interim trail use/rail banking, and the conditions that BNSF: (1) during salvage activities, shall revegetate areas impacted by salvage activities with species native to the areas; (2) during salvage activities, shall follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (3) shall ensure that salvage activities associated with the proposed abandonment do not impact safety by affecting any 100-year floodplains during salvage activities and shall (a) leave the roadbed along the drainage culverts and structures in place, and (b) if the wood timber bridge spanning Spring Creek within the City is removed, (i) remove components to ground level above the water line and to the stream bed below the water line, and (ii) leave no bridge components in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream, (4) prior to beginning salvage activities, shall submit site forms for the bridges and any historical sites and the final cultural resources report to the State Historical Society of North Dakota; and (5) shall provide the National Geodetic Survey (NGS) with 90 days' notice prior to disturbing or destroying any identified geodetic station markers, and shall consult with NGS to plan for their relocation. A 180-day period (until January 2, 2005) was authorized to permit the City of Zap to negotiate an interim trail use/rail banking agreement with BNSF for the entire line, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d).

The Board's Section of Environmental Analysis (SEA) states that, on July 12, 2004, a comment was received from the North Dakota Department of Health, Environmental Health Section (NDDH), stating that, in addition to the Best Management Practices condition that it had

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Decision

by Surface Transportation Board

08/09/2004

CC Comm Legal

previously sought, it requests a condition regarding any release of petroleum products, hazardous materials, or chemicals that may impact human health or environment, which are known to have occurred in the past or are discovered in the project area during abandonment and salvage operations. Therefore, based on this letter comment, SEA recommends that BNSF shall consult with the NDDH regarding the release of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during salvage activities

The recommended condition will be imposed. As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

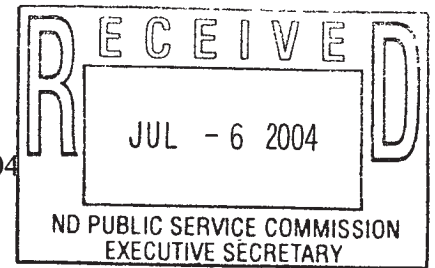
1. This proceeding is reopened.
2. Upon reconsideration, the abandonment of the rail line described above is subject to the following additional environmental condition: BNSF shall consult with the NDDH regarding any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during salvage.
3. All other provisions and environmental conditions imposed in the July 2, 2004 decision in this proceeding will remain in effect
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams  
Secretary

34773  
DO

SERVICE DATE - LATE RELEASE JULY 2, 2004



SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 420X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY—ABANDONMENT EXEMPTION—IN MERCER COUNTY, ND

Decided: July 2, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 3.36-mile line of railroad between milepost 77.14 near Antelope Valley Station and milepost 80.50 near Zap, in Mercer County, ND. Notice of the exemption was served and published in the Federal Register on June 4, 2004 (69 FR 31656). The exemption is scheduled to become effective on July 6, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 10, 2004. In the EA, SEA states that the North Dakota Park and Recreation Department recommends that any area impacted by salvage activities be revegetated with species native to the project area. Therefore, SEA recommends that BNSF be required to revegetate areas impacted by salvage activities with species native to the area.

SEA also notes that the North Dakota Department of Health, Environmental Health Section (NDDH), states that, even, though a North Dakota Pollution Discharge Elimination System permit would not be required, NDDH recommends that BNSF follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body. Accordingly, SEA recommends that, during salvage activities, BNSF follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body.

Finally, SEA states that the Mercer County Office of Emergency Services states that the proposed abandonment would not adversely affect any 100-year floodplains in the area, provided that: (1) the roadbed along with drainage culverts and structures are left in place; and (2) if the wood timber bridge spanning Spring Creek within the City of Zap (City) is removed, components are removed to the ground level above the water line and to the stream bed below the water line. No bridge components should be left in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream. BNSF states that it plans to leave the roadbed, along with the drainage culverts and structures, in place, and if the wood timber bridge within the City were to be removed, all components would be removed. Accordingly, to ensure that salvage activities associated with the proposed abandonment do not impact safety by

affecting any 100-year floodplains, SEA recommends that BNSF be required to conduct salvage activities in the following manner: (1) leave the roadbed along with drainage culverts and structures in place; and (2) if the wood timber bridge spanning Spring Creek within the City is removed, components are removed to ground level above the water line and to the stream bed below the waterline. No bridge components shall be left in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream.

In the EA, SEA initially recommended that BNSF retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Following the receipt of additional comments from BNSF and the State Historical Society of North Dakota (SHPO), SEA has determined that the previously recommended historic condition is no longer necessary. However, the SHPO still requests submission of site forms for the bridges and any historical sites and the final cultural resources report.<sup>1</sup> SEA now recommends the imposition of a condition requiring that, prior to salvage activities, BNSF be required to submit site forms for the bridges and any historical sites and the final cultural resources report to the SHPO.

Comments to the EA were due by June 28, 2004. Based on comments to the EA, SEA states that the National Geodetic Survey (NGS) has identified four geodetic station markers that may be affected by the proposed abandonment and has requested that it receive at least 90 days' notification in advance of any activities that will disturb or destroy the markers. Therefore, SEA recommends that BNSF provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

Based on SEA's recommendations, the recommended environmental conditions will be imposed.

On June 1, 2004, the City filed a request for issuance of a notice of interim trail use (NITU) for the subject line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to negotiate with BNSF for acquisition of the right-of-way for use as a trail. The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29 and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR

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<sup>1</sup> In the EA, SEA initially stated that the SHPO had requested that a Class I Cultural Resources Inventory of the Area of Potential Effect be prepared and submitted to its office for consultation and recommended that the two bridges over 50 years of age along the line be recorded and preliminarily evaluated by a state-permitted cultural resource firm.

1152.29. By letter filed on June 3, 2004, BNSF indicated its willingness to negotiate with the City for interim trail use

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration of railroad purposes.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on June 4, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the July 6, 2004 effective date of the exemption (until January 2, 2005), and subject to the conditions that BNSF: (1) during salvage activities, shall revegetate areas impacted by salvage activities with species native to the areas; (2) during salvage activities, shall follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (3) shall ensure that salvage activities associated with the proposed abandonment do not impact safety by affecting any 100-year floodplains during salvage activities and shall (a) leave the roadbed along with drainage culverts and structures in place, and (b) if the wood timber bridge spanning Spring Creek within the City is removed, (i) remove components to ground level above the water line and to the stream bed below the water line, and (ii) leave bridge components in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream; (4) prior to beginning salvage activities, shall submit site forms for the bridges and any historical sites and the final cultural resources report to the SHPO; and (5) shall provide NGS with 90 days' notice prior to disturbing or destroying any identified geodetic station markers, and shall consult with NGS to plan for their relocation.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by January 2, 2005, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

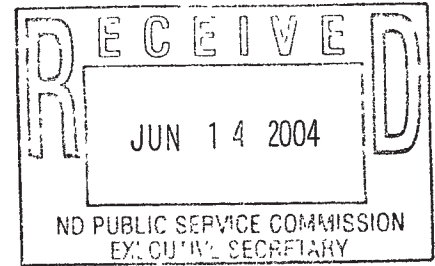
By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

34742  
SEA

SERVICE DATE - JUNE 10, 2004

SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423



**ENVIRONMENTAL ASSESSMENT**

**STB Docket No. AB-6 (Sub-No. 420X)**

**The Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In  
Mercer County, ND**

**BACKGROUND**

In this proceeding, the Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 in connection with the abandonment of a line of railroad in Mercer County, North Dakota. The line to be abandoned extends 3.36 miles from milepost 77 14 near Antelope Valley Station to milepost 80 50 near Zap. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, BNSF will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

**DESCRIPTION OF THE LINE**

According to BNSF, no local traffic has moved over the line for at least two years and there is no overhead traffic to be rerouted. BNSF states that the line crosses three public roads and two private roads.

BNSF states that Antelope Valley Station and Republic are the stations along the line, and the line also passes through the town of Zap (population 231). The main agricultural crop grown along the line is wheat, coal deposits and mines occur in the general area of the line. The right-of-way of the line is mainly 100 feet wide. The right-of-way of the station grounds vary in width.

**ENVIRONMENTAL REVIEW**

BNSF submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's environmental rules [49 CFR 1105 7(b)]. We have reviewed and investigated the record in this proceeding.

The North Dakota Parks and Recreation Department (NDPRD) submitted comments recommending that any areas impacted by salvage activities be revegetated with species native to the project area. We will recommend a condition based on NDPRD's recommendations.

The North Dakota Department of Health, Environmental Health Section (NDDH) has submitted comments stating that though a North Dakota Pollution Discharge Elimination System permit would not be required, NDDH recommends that Best Management Practices be followed during salvage activities to prevent dirt, construction debris and waste material from entering a storm drainage system or water body. We will recommend a condition based on NDDH's recommendations.

The U.S. Fish and Wildlife Service has submitted comments stating that the proposed abandonment would have no significant impact on fish and wildlife resources and no endangered or threatened species are known to occupy the project area.

The U.S. Army Corps of Engineers (Corps) submitted comments stating that a Corps permit would not be required for the proposed abandonment.

The Mercer County Office of Emergency Services (OES) also submitted comments stating that the proposed abandonment would not adversely affect any 100-year floodplains in the area, provided that (1) the roadbed along with drainage culverts and structures are left in place, (2) if the wood timber bridge spanning Spring Creek within the City of Zap is removed, components be removed to ground level above the water line and to the stream bed below the water line. No bridge components should be left in place that may catch ice, debris, or in any manner restricts the natural flow of the stream. BNSF states that it plans to leave the roadbed, along with the drainage culverts and structures, in place, and if the wood timber bridge within the City of Zap were to be removed, all components would be removed. In order to ensure that salvage activities associated with the proposed abandonment do not impact safety by affecting any 100-year floodplains, we will recommend a condition requiring BNSF to comply with OES's recommendations.

The City of Zap has submitted to the Board a statement of willingness to assume financial responsibility for establishing interim trail use and rail banking along the line.

## **HISTORIC REVIEW**

BNSF submitted an historic report as required by the Surface Transportation Board's environmental rules [49 CFR 1105.8(a)] and served the report on the State Historical Society of North Dakota (the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). BNSF states that there are two bridges in the immediate area that are 50 years old or older. At the time this environmental assessment was prepared, the SHPO had not completed its assessment of the proposed abandonment. The SHPO has requested additional information from

BNSF, including a Class I Cultural Resources Inventory<sup>1</sup> of the Area of Potential Effect (APE) be prepared and submitted to its office for consultation. The SHPO also recommended that the two bridges be recorded and preliminarily evaluated by a state-permitted cultural resource firm. Pending completion of the SHPO's review, we recommend a condition to ensure compliance with the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

### CONDITIONS

We recommend that the following environmental conditions be placed on any decision granting abandonment authority.

1. Based on the comments of the North Dakota Parks and Recreation Department we recommend that **Burlington Northern and Santa Fe Railway Company shall revegetate areas impacted by salvage activities with species native to the area.**
2. Based on the comments of the North Dakota Department of Health, Environmental Health Section we recommend that **Burlington Northern and Santa Fe Railway Company follow Best Management Practices during salvage activities to prevent dirt, construction debris and waste material from entering a storm drainage system or water body.**
3. The State Historical Society of North Dakota has requested that a Class I Cultural Resources Inventory of the Area of Potential Effect be prepared and submitted to its office for consultation and recommended that the two bridges over 50 years of age along the line be recorded and preliminarily evaluated by a state-permitted cultural resource firm. **Accordingly, Burlington Northern Santa Fe Railway Company shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.**
4. Based on the comments of the Mercer County Office of Emergency Services, we recommend that **Burlington Northern Santa Fe Railway Company shall conduct salvage activities in the following manner: (1) leave the roadbed along with drainage culverts and structures in place; (2) if the wood timber bridge spanning Spring Creek within the City of Zap is removed,**

---

<sup>1</sup> For the Class I Cultural Resources Inventory, BNSF is required to perform a files search. BNSF shall submit the results of the files search in: 1) a short report detailing all cultural resources (including potential or actual historic properties) in the legal sections of the APE and 2) 7.5' topographic maps with the cultural resource locations and previously inventoried areas plotted and marked.

**components shall be removed to ground level above the water line and to the stream bed below the water line. No bridge components shall be left in place that may catch ice, debris, or in any manner restricts the natural flow of the stream.**

## **CONCLUSIONS**

Based on the information provided from all sources to date, we conclude that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

## **PUBLIC USE**

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **TRAILS USE**

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment.

Environmental comments may also be filed electronically on the Board's web site, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link **Please refer to Docket No. AB-6 (Sub-No. 420X) in all correspondence, including e-filings addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Rini Ghosh, the environmental contact for this case by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at [ghoshr@stb.dot.gov](mailto:ghoshr@stb.dot.gov)

Date made available to the public **June 10, 2004.**

**Comment due date: June 28, 2004.**

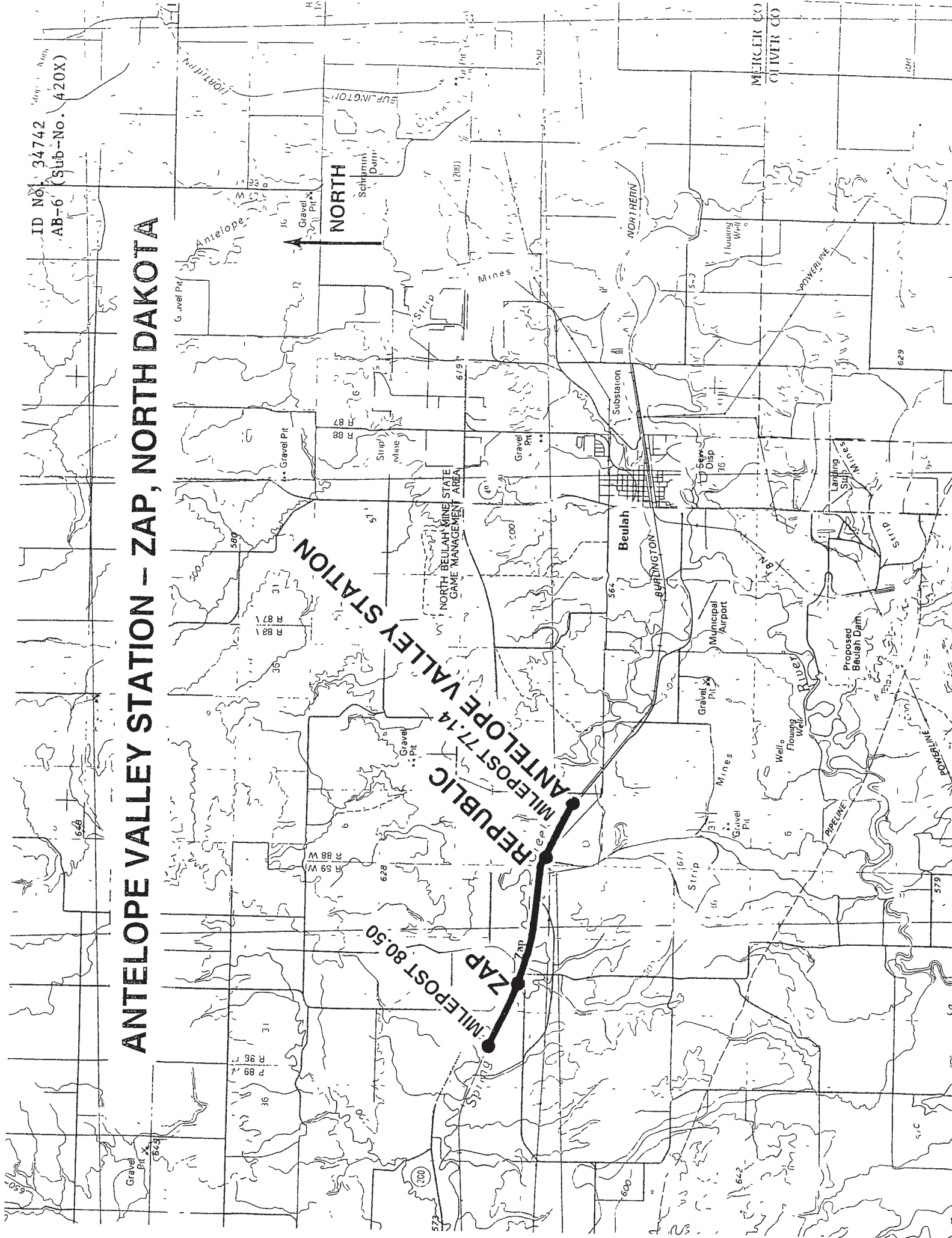
By the Board, Victoria Rutson, Chief, Section of Environmental Analysis

Vernon A Williams  
Secretary

Attachment

ID No. 34742  
AB-6 (Sub-No. 420X)

# ANTELOPE VALLEY STATION - ZAP, NORTH DAKOTA



34738

SERVICE DATE - JUNE 4, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No AB-6 (Sub-No 420X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in  
Mercer County, ND



The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 3.36-mile line of railroad between milepost 77 14 near Antelope Valley Station, and milepost 80 50, near Zap in Mercer County, ND The line traverses United States Postal Service Zip Codes 58580 and 58523.

BNSF has certified that: (1) no local traffic has moved over the line for at least 2 years, (2) there is no overhead traffic to be rerouted, (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S District Court or has been decided in favor of complainant within the 2-year period, and (4) the requirements at 49 CFR 1105 7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105 11 (transmittal letter), 49 CFR 1105 12 (newspaper publication) and 49 CFR 1152 50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co –Abandonment–Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 6, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 14, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 24, 2004, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.<sup>3</sup>

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<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1102.2(f)(25).

<sup>3</sup> Each trail use request must be accompanied by the filing fee, which is set at \$200. See 49 CFR 1002.2(f)(27).

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn & Peters, 311 S Wacker Dr , Suite 3000, Chicago, IL 60606-6677.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 11, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, D.C. 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by June 4, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at

“WWW.STB.DOT.GOV.”

Decided: May 26, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A Williams

Secretary



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

John Hoeven  
*Governor of North Dakota*

North Dakota  
State Historical Board

Diane K. Larson  
*Bismarck - President*

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*Jamestown*

Sara Otte Coleman  
*Director  
Tourism Division*

Kathi Gilmore  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Douglass Prchal  
*Director  
Parks and Recreation  
Department*

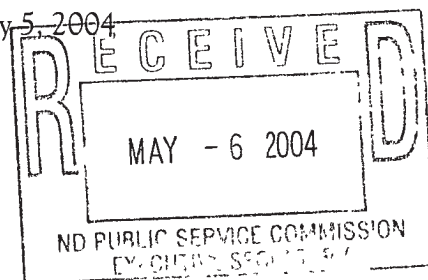
David A. Sprynczynatyk  
*Director  
Department of Transportation*

John E. Von Rueden  
*Bismarck*

Merlan E. Paaverud, Jr.  
*Director*

Accredited by the  
American Association  
of Museums

May 5, 2004



Tony Clark, Commissioner  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

**ND SHPO REF.: 04-0221**, Proposed BN&SF Railway Co. Abandonment,  
Antelope Valley Station to Zap, Mercer County, ND.

Dear Tony:

We have reviewed Project: 04-0221, proposed abandonment of the Burlington Northern and Santa Fe Railway Company line between the Antelope Valley Station and Zap, North Dakota.

The ND SHPO has, in a letter dated 1/22/04, recommended to the STB and Burlington Northern & Santa Fe (BN&SF) Railway Company that a Class I Cultural Resources Inventory (i.e., files search) of the Area of Potential Effect (APE) be prepared and submitted to our office for consultation. We also recommended that two bridges be recorded on NDCRS site forms. We are including a copy of the letter for your records, and look forward to not only reviewing the information when it is submitted to our office by BN&SF or its legal representative, but continuing consultation with the STB, BN&SF, and PSC on this project.

Thank you for the opportunity to review this project. Please include the ND SHPO Reference number listed above in any further correspondence for this specific project. If you have any questions please contact Duane Klinner at (701) 328-3576.

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer  
(North Dakota)

**5 RR-04-202**

Pages 2

Response to proposed abandonment

by Historical Society

05/06/2004

CC Comm Legal



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

COPY

John Hoeven  
*Governor of North Dakota*

North Dakota  
State Historical Board

Diane K. Larson  
*Bismarck - President*

Marvin L. Kaiser  
*Williston - Vice President*

Albert I. Berger  
*Grand Forks - Secretary*

Chester E. Nelson, Jr.  
*Bismarck*

Gerold Gerntholz  
*Valley City*

A. Runc Todd III  
*Jamestown*

Sara Otte Coleman  
*Director  
Tourism Division*

Kathi Gilmore  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Douglass Prchal  
*Director  
Parks and Recreation  
Department*

David A. Sprynczynatyk  
*Director  
Department of Transportation*

John E. Von Rueden  
*Bismarck*

Merlan E. Paaverud, Jr.  
*Director*

Accredited by the  
American Association  
of Museums

January 22, 2004

Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

**NDSHPO REF.: 04-0221**, Proposed BN&SF Railway Co. Abandonment,  
Antelope Valley Station to Zap, Mercer County, ND.

Dear Mr. Nettles:

We have reviewed Project: 04-0221, proposed abandonment of the Burlington Northern and Santa Fe Railway Company line between the Antelope Valley Station and Zap, North Dakota.

We recommend that a Class I Cultural Resources Inventory (i.e., files search) of the Area of Potential Effect (APE) be prepared and submitted to our office for consultation. The results of the files search should include a short report detailing all cultural resources (including potential or actual historic properties) in the legal sections of the APE and 7.5' topographic maps with the cultural resource locations and previously inventoried areas plotted and marked on it.

We also recommend that the two bridges be formally recorded on NDCRS site forms. The recording should be completed by a state permitted cultural resource firm/architectural historian, and include preliminary evaluations. We have previously provided your office with a list of state permitted firms.

Thank you for the opportunity to review this project. Please include the ND SHPO Reference number listed above in any further correspondence for this specific project. If you have any questions please contact Duane Klinner at (701) 328-3576.

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer  
(North Dakota)



# Public Service Commission State of North Dakota

## COMMISSIONERS

Tony Clark, President  
Susan E Wefald  
Kevin Cramer

Executive Secretary  
Illona A Jeffcoat-Sacco

April 27, 2004

600 E Boulevard Ave Dept 408  
Bismarck, North Dakota 58505-0480  
web www.psc.state.nd.us  
e-mail ndpsc@psc.state.nd.us  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

«Name»  
«Company»  
«Address1»  
«CityStZip»

Re Case No. RR-04-202  
Burlington Northern & Santa Fe Railway Company  
Antelope Valley Station to Zap, ND – 3.36 Miles  
Abandonment

Dear «Salutation»:

Burlington Northern Santa Fe (BNSF) Railroad has notified the Public Service Commission that it will soon seek federal approval to abandon 3.36 miles of track between Antelope Valley Station and Zap, in Mercer County in western North Dakota.

This abandonment will be processed under an exemption provision before the federal Surface Transportation Board. The procedure permits an expedited abandonment time frame if a line has not been used in at least two years.

If this application is approved, the BNSF is expected to dismantle the line within the next two years. BNSF owns the underlying land. It is expected that at some time after the line is dismantled, BNSF's property management contractor will offer to sell, lease, exchange, or otherwise dispose of the land, under the requirements of N.D.C.C. § 49-09-04.2, to present owners or lessees of fixed assets located on the property, or to adjacent landowners, or for public recreational use.

If you have any questions about the abandonment application or how the Surface Transportation Board processes these cases, please contact William W. Binek at 701-328-4088. Mr. Binek is the Commission's chief counsel and would be happy to assist you.

Sincerely,

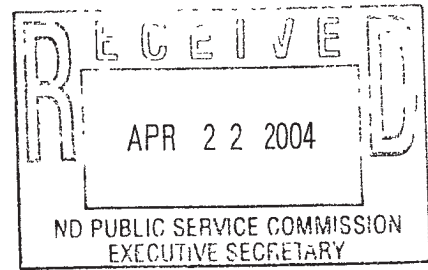
Tony Clark  
Commissioner

Name	Com. y	Address1	C itZip	Salutation
The Honorable Kent Conrad	United States Senate	530 Hart Office Building	Washington, DC 20510	Senator Conrad
The Honorable Byron Dorgan	United States Senate	713 Hart Office Building	Washington, DC 20510	Senator Dorgan
The Honorable Earl Pomeroy	United States House of Representatives	1533 Longworth	Washington, DC 20510	Representative Pomeroy
Mr. Doug Prchal	ND Parks & Recreation Department	1835 East Bismarck Expressway	Bismarck, ND 58504-6708	Mr. Prchal
Mr. Brian Kramer	ND Farm Bureau	PO Box 2793	Bismarck, ND 58503	Mr. Kramer
Mr. Vance Taylor	ND Mill and Elevator National Sunflower Association	PO Box 13078	Grand Forks, ND 58208-3078	Mr. Taylor
Mr. Larry Kleingartner	ND Department of Agriculture Planning Division	4023 North State Street	Bismarck, ND 58501	Mr. Kleingartner
The Honorable Roger Johnson, Commissioner	ND Department of Agriculture Planning Division	State Capitol - 6 <sup>th</sup> Floor	Bismarck, ND 58505-0200	Commissioner Johnson
Mr. Bob Johnston	Department of Transportation Chief of Staff, Governor's Office	DOT Building	Bismarck, ND 58505-0700	Mr. Johnston
Mr. Bill Goetz	ND Department of Commerce	State Capitol - 1 <sup>st</sup> Floor	Bismarck, ND 58505-0001	Mr. Goetz
Mr. Lee Peterson, Commissioner	ND Department of Commerce	PO Box 2057	Bismarck, ND 58502	Mr. Peterson
Mr. Merl Paaverud	State Historical Society	ND Heritage Center	Bismarck, ND 58505-0830	Mr. Paaverud
Mr. Rick Larson	ND Land Department	PO Box 5523	Bismarck, ND 58502-5523	Mr. Larson
Mr. Steve Strege	North Dakota Grain Dealers Association	606 Black Building	Fargo, ND 58102	Mr. Strege
Mr. Gene Griffin	Upper Great Plains Transportation Institute	PO Box 5074	Fargo, ND 58102-5074	Mr. Griffin
Mr. Neal Fisher	North Dakota Wheat Commission	4023 North State Street	Bismarck, ND 58501	Mr. Fisher
The Honorable Thomas L. Trenbeath, Chairman	ND Senate Transportation Committee	PO Box 361	Cavalier, ND 58220	Senator Trenbeath
The Honorable Robin Weisz, Chairman	ND House Transportation Committee	50 Highway 3S	Hurdsfield, ND 58451	Representative Weisz
Mr. John Risch, III		750 Augsburg	Bismarck, ND 58501	Mr. Risch
Mr. Dave Maclver	Greater North	2000 Schafer	Bismarck, ND	Mr. Maclver

Mr. Robert Carlson	Dakc Association	Street	5 71	
Mr. Doug Erhart	North Dakota Farmers Union	PO Box 2136	Jamestown, ND 58402-2136	Mr. Carlson
	Brotherhood of Maintenance Way Employees	1203 27 <sup>th</sup> Street NW	Mandan, ND 58554	Mr. Erhart
Mr. John Mittleider	North Dakota Barley Council	505 40 <sup>th</sup> St SW Unit E	Fargo, ND 58103-1184	Mr. Mittleider
Mayor Clarence Olszewski		P O Box 97	Zap, ND 58580-0097	Mayor Olszewski
Senator Randy Christmann		401 3 <sup>rd</sup> Ave. NE	Hazen, ND 58545	Senator Christmann
Representative Pat Galvin		621 3 <sup>rd</sup> Ave. NW	Hazen, ND 58545	Representative Galvin
Representative Gary Kreidt		3892 County Rd. 86	New Salem, ND 58563	Representative Kreidt
BHG, Inc.	Hazen Star	PO Box 508	Hazen, ND 58545	Sir
Mr. John Klein, Chairman	Water Resource District	P O Box 488	Hazen, ND 58545	Mr. Klein
Mr. Lyle Latimer	County Commissioner	PO Box 39	Stanton, ND 58571	Mr. Latimer
Mr. Wayne A. Entze	County Commissioner	PO Box 39	Stanton, ND 58571	Mr. Entze
Mr. Gary Murray	County Commissioner	PO Box 39	Stanton, ND 58571	Mr. Murray
Mr. Mike McNamee	Modern Grain, Inc.	P O Box 157	Beulah, ND 58523	Mr. McNamee

April 19, 2004

North Dakota Public Service Commission  
600 East Boulevard, Dept 408  
Bismarck, ND 58505-0480



**Re: *Surface Transportation Board Docket No. AB-6 (Sub-No. 420X);  
The Burlington Northern and Santa Fe Railway Company  
Abandonment of Antelope Valley Station, ND to Zap, ND***

Dear Sir or Madam.

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Michael A Smith  
Senior Counsel  
Direct 312 360 6724  
Fax 312 360 6598  
msmith@  
freebornpeters.com

*Chicago*

*Springfield*

On or after May 5, 2004, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 3.36 miles of railroad line between M.P. 77.14 in Antelope Valley Station, North Dakota to M.P. 80.50 near Zap, North Dakota, which traverses through United States Postal ZIP Codes 58580 and 58523 in Mercer County, North Dakota. Attached are an Environmental and Historic Reports describing the proposed action and any expected environmental or historic effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W., Room 504, Washington, D.C. 20423-0001, telephone (202) 565-1538 and refer to the above Docket Number. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA, with a copy to our representative, would be appreciated within three weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Michael Smith who may be contacted by telephone at (312) 360-6724 or by mail at 311 S Wacker Dr, Suite 3000, Chicago, Illinois 60606-6677.

Sincerely,

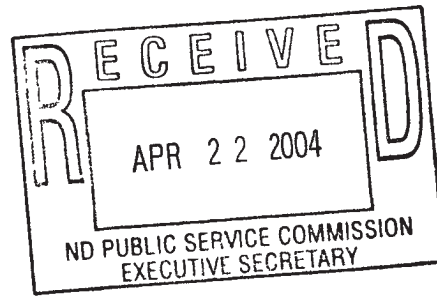
A handwritten signature in black ink, appearing to read "Michael A. Smith".

Michael A. Smith

**VIA CERTIFIED MAIL**

April 19, 2004

North Dakota Public Service Commission  
600 East Boulevard Ave., Department 408  
Bismarck, ND 58505-0480



***Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 420X);  
The Burlington Northern and Santa Fe Railway Company  
Abandonment between Antelope Valley Station, North Dakota and  
Zap, North Dakota***

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Michael A. Smith  
Senior Counsel  
Direct 312 360 6724  
Fax 312 360 6598  
msmith@  
freebornpeters.com

Dear Sir or Madam:

The Burlington Northern and Santa Fe Railway Company ("BNSF") provides your agency the attached notice of the BNSF's intent to abandon the above-referenced right-of-way. Based on information in our possession, the line does contain federally granted rights-of-way. Any documents in BNSF's possession will be made available promptly to those requesting it.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Smith", with a long horizontal flourish extending to the right.

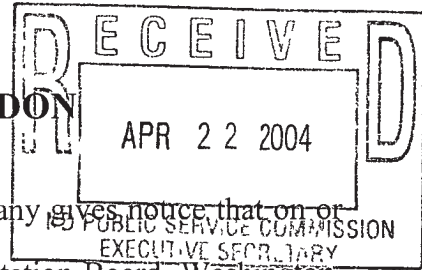
Michael A. Smith

*Chicago*

*Springfield*


Enclosure

**NOTICE OF INTENT TO ABANDON**



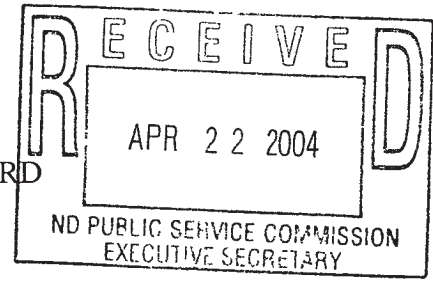
The Burlington Northern and Santa Fe Railway Company gives notice that on or after May 5, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, an abandonment notice of exemption under 49 CFR 1152 Subpart F -- Exempt Abandonments permitting the abandonment of or discontinuance of service of 3.36 miles of railroad line between M.P 77.14 in Antelope Valley Station, North Dakota to M.P. 80.50 near Zap, North Dakota, which traverses through United States Postal ZIP Codes 58580 and 58523 in Mercer County, North Dakota. The proceeding will be docketed as No AB-6 (Sub No. 420X). Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W , Washington DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)] Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative



Michael Smith, Freeborn & Peters, 311 S Wacker Drive, Suite 3000, Chicago, Illinois  
60606-6677 - telephone (312) 360-6724.

BEFORE THE  
SURFACE TRANSPORTATION BOARD



In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M.P. 77.14 in Antelope Valley  
Station, North Dakota and M.P. 80.50  
near Zap, North Dakota

Docket No AB-6  
(Sub No. 420X)

**ENVIRONMENTAL REPORT**

The following information is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 77.14 near Antelope Valley Station, Mercer County, North Dakota and M.P. 80.50 near Zap, Mercer County, North Dakota, total distance of 3.36 miles.

**(1) Proposed action and Alternatives:** Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

**(2) Transportation system:** Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

**(3) Land Use:**

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with existing land use plans. The Mercer County Board of Commissioners was notified by letter dated December 8, 2003. See Exhibit B. As of the date of this report, the Mercer County Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

BNSF does not believe that prime agriculture will be effected by the proposed abandonment. The Natural Resource Conservation Service was notified by letter dated December 8, 2003. See Exhibit C. As of the date of this report, The Natural Resource Conservation Service has not responded. BNSF will provide the Board copies of any response it may receive.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why

The right-of-way may be suitable for an alternative public use.

However, the Mercer County Board of Commissioners was notified by letter dated December 8, 2003 See Exhibit B As of the date of this report, the Mercer County Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive.

**(4) Energy:**

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy

consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service

**(5) Air:**

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No

(B) An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either.

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction

under 49 U.S.C § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

**(6) Noise:** If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

**(7) Safety:**

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are three public crossings and two private crossings.

During salvage operations on the line, if any may be required, precautions

will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment will not result in transportation of hazardous materials

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

BNSF is not aware of any evidence of known hazardous waste site or sites where there have been known hazardous materials spills on the right of way

**(8) Biological resources:**

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The project as described will have no significant impact on fish and wildlife resources. No endangered or threatened species are known to occupy the project area See Exhibit D, response from the U.S. Fish and Wildlife Service.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects

The project as defined does not affect state park lands that the North Dakota Department of Parks and Recreation Department manages or Land and Water Conservation Fund recreation projects the Department

coordinates. See Exhibit E, letter from the North Dakota Department of Parks and Recreation. The Bureau of Land Management has no wildlife sanctuaries or refuges, National or State parks or forests in the proposed impact areas. See Exhibit F, letter from the Bureau of Land Management.

**(9) Water:**

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The North Dakota Department of Health recommends that Best Management Practices be followed during the course of the project to prevent dirt, construction debris and waste material from entering a storm drainage system or water body. See Exhibit G, letter from the North Dakota Department of Health.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

A Section 404 permit is not required. See Exhibit H, letter from the Army Corps of Engineers. The proposed abandonment should not adversely affect any 100-year floodplains. See Exhibit I, letter from the Mercer County Office of Emergency Services. The roadbed along with the drainage culverts and structures will be left in place and if the wood timber bridge within the City of Zap is removed, all components will be removed.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

Permits under Section 402 of the Clean Water Act are not required for the proposed abandonment. Based on the described activity, an NDPDES permit would not be required since there will be little or no grading disturbance. See Exhibit G, letter from the North Dakota Department of Health.

**(10) Proposed Mitigation:** Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations

Respectfully Submitted,



Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: April 16, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M P. 77.14 in Antelope Valley  
Station, North Dakota and M.P. 80.50  
near Zap, North Dakota

Docket No. AB-6  
(Sub No. 420X)

**HISTORICAL REPORT**

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Notice of Exemption to abandon its line of railroad between M.P. 77.14 in Antelope Valley Station, North Dakota to M.P. 80 50 near Zap, North Dakota, a total distance of 3 36 miles.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U S G.S. Topographical map has been provided to the State Historical Society of North Dakota and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area

The Antelope Valley Station to Zap, North Dakota line connects the railroad stations of Antelope Valley Station and Republic and the town of Zap. Antelope Valley

Station and Republic are railroad stations along the line. The town of Zap has a population of 231 as listed in the North Dakota League of Cities City Directory for 2002 - 2004. Wheat is the main agricultural crop grown along the line, however, there are coal deposits and mines in the general area of the line.

The right of way is 100 feet wide with the exception of station grounds which can vary in width.

(3) Good quality photographs (actual photographic prints, not photocopies) or railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

There are two bridges that are 50 years or older in the immediate area of the abandonment. Photographs of the two bridges are attached to this report. See Exhibit J

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

The dates of construction of the two bridges are included with the photographs. See Exhibit J

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The right of way was acquired by the Western Dakota Railway Company, a predecessor of the Northern Pacific Railway Company (NP). In 1970 the NP merged into the Burlington Northern Railroad (BN). In 1995, BN merged with The Atchison Topeka and Santa Fe Railway to become The Burlington Northern and Santa Fe Railway Company (BNSF).

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic,

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

The State Historical Society of North Dakota recommends that a Class I Cultural Inventory of the Area of Potential Effect (APE) be prepared and submitted to them for consultations. The State Historical Society of North Dakota also recommends that the two bridges be formally recorded on NDCRS site forms. See Exhibit K, letter from the State Historical Society of North Dakota . BNSF has commissioned an inventory by a qualified historian. Upon completion of the survey, it will be provided to the North Dakota Historical Society.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

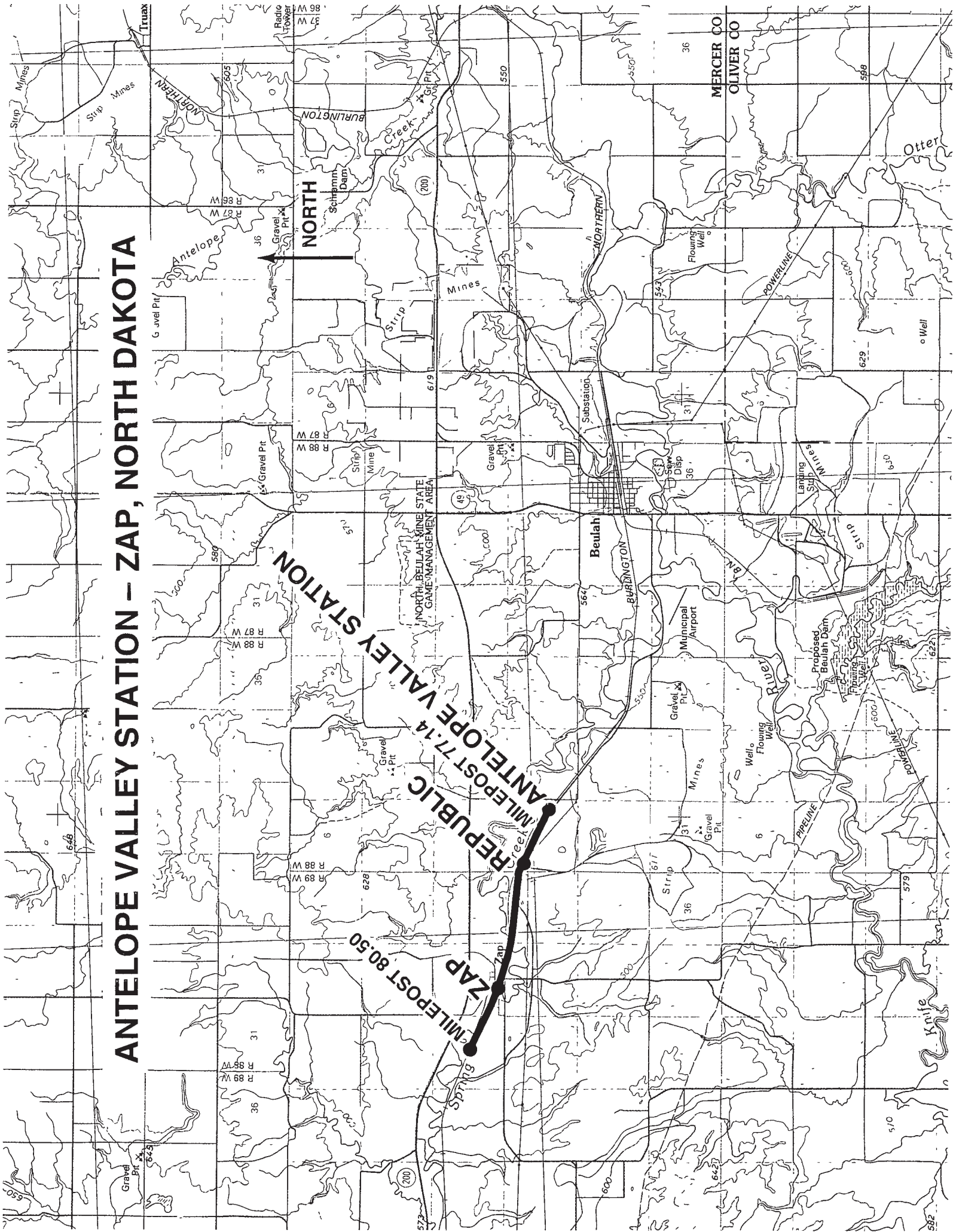
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date April 16, 2004

# ANTELOPE VALLEY STATION - ZAP, NORTH DAKOTA



Freeborn & Peters LLP

December 8, 2003

Gary Murray  
County Commission Chair  
Mercer County Board of Commissioners  
P.O. Box 39  
Mercer County Courthouse  
Stanton, ND 58571-0039

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
of Antelope Valley, North Dakota and Zap, North Dakota***

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Brian Nettles  
Paralegal  
Direct 312 360 6336  
Fax 312 360 6596  
bnettl@  
freebornpeters.com

Dear Sir or Madam

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 3.36 miles of railroad line between M.P. 77 14 at Antelope Valley Station, North Dakota to M.P. 80 50 in Zap, North Dakota.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*

Freeborn & Peters LLP

December 8, 2003

Natural Resources Conservation Service  
Beulah Service Center  
1400 Highway 49 N, Suite 101  
Beulah, ND 58523-6065

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
of Antelope Valley, North Dakota and Zap, North Dakota***

Dear Sir or Madam:

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Brian Nettles  
Paralegal  
Direct 312 360 6336  
Fax 312 360 6596  
bnettl@  
freebornpeters.com

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 3.36 miles of railroad line between M.P. 77.14 at Antelope Valley Station, North Dakota to M.P. 80.50 in Zap, North Dakota.

As part of the environmental report BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact

Please provide this information by January 8, 2004. Thank you for your cooperation

*Chicago*

*Springfield*

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336

Thank you in advance for your cooperation

Sincerely,



Brian Nettles

/bn  
Enclosure

Freeborn & Peters LLP

December 8, 2003

U. S. Fish and Wildlife Service  
North Dakota Field Office  
3425 Miriam Avenue  
Bismarck, North Dakota 58501-7926

*Re: The Burlington Northern and Santa Fe Railway Company Abandonment  
of Antelope Valley, North Dakota and Zap, North Dakota*

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Brian Nettles  
Paralegal  
Direct 312 360 6336  
Fax 312 360 6596  
bnettl@  
freebornpeters.com

Dear Sir or Madam

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 3.36 miles of railroad line between M.P. 77.14 at Antelope Valley Station, North Dakota to M.P. 80.50 in Zap, North Dakota.

As part of the environmental report BNSF needs to know whether or not there are any endangered or threatened species, wildlife sanctuaries or refuges or areas designated as critical habitat adjacent or near the line and if so, what effects the proposed action may have.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by January 8, 2004. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.


Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

U.S. FISH AND WILDLIFE SERVICE
ECOLOGICAL SERVICES
ND FIELD OFFICE
Project as described will have no significant impact on fish and wildlife resources. No endangered or threatened species are known to occupy the project area. IF PROJECT DESIGN CHANGES ARE MADE, PLEASE SUBMIT PLANS FOR REVIEW.
12/15/03 Date
 Jeffrey K. Towner Field Supervisor

Chicago

Springfield



• 1600 East Century Avenue, Suite 3  
• Bismarck, ND 58503-0649

• Phone 701-328-5357  
• Fax 701-328-5363  
• E-mail parkrec@state.nd.us  
• www.NDparks.com

December 18, 2003

Brian Nettles  
Freeborn & Peters  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

Re The Burlington Northern and Santa Fe Railway Company Abandonment of Antelope Valley, North Dakota to Zap,  
North Dakota

Dear Mr. Nettles.

The North Dakota Parks and Recreation Department (NDPRD) has reviewed the above referenced application to abandon 3.36 miles of railroad line between M.P. 77.14 at Antelope Valley Station, North Dakota to M.P. 80.50 in Zap, North Dakota, Mercer County.

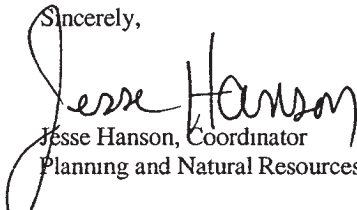
Our agency scope of authority and expertise covers recreation and biological resources (in particular rare species and ecological communities). The project as defined does not affect state park lands that we manage or Land and Water Conservation Fund recreation projects that we coordinate.

The North Dakota Natural Heritage Inventory has limited rare species information from the project area. Due to the lack of available survey data we cannot give an accurate assessment as to potential impacts to rare species and associated habitats.

The NDPRD recommends that any impacted areas be revegetated with species native to the project area.

Thank you for the opportunity to comment on this project. Please contact Kathy Duttonhefner (701-328-5370) of our staff if additional information is needed.

Sincerely,

  
Jesse Hanson, Coordinator  
Planning and Natural Resources Division  
R USNDNHI\*1226

• • • • •  
*Play in our backyard!*



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

North Dakota Field Office

2933 3<sup>rd</sup> Ave West

Dickinson, ND 58601

701-227-7700

<http://www.mt.blm.gov/ndfo/>

In Reply To

2700  
LRG

January 5, 2004

Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

RE The Burlington Northern and Santa Fe Railway Company Abandonment of Antelope Valley, North Dakota and Zap, North Dakota comment due January 8, 2004 AND,

The Burlington Northern and Santa Fe Railway Company Abandonment of Hannah Junction, North Dakota to McCanna, North Dakota comment due January 9, 2004.

Dear Mr Nettles:

The Bureau of Land Management (BLM) has no wildlife sanctuaries or refuges, National or State parks or forests in the proposed impact areas

However, please keep the BLM informed as to the continued process. These railroad abandonments depending under which Act they were granted, impact the BLM. We appreciate the opportunity to comment

Sincerely,

  
Linda Gisvold  
Realty



**NORTH DAKOTA DEPARTMENT OF HEALTH**  
**Environmental Health Section**

**Location:**

1200 Missouri Avenue  
Bismarck, ND 58504-5264

**Fax #:**

701-328-5200

**Mailing Address:**

P O Box 5520  
Bismarck, ND 58506-5520

March 3, 2004

Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive  
Chicago IL 60606-6677

Re: BNSF Railway Company – Railroad Line Abandonment  
Near Zap, North Dakota

Dear Mr. Nettles:

We have reviewed your letter regarding BNSF's plans to abandon a section of railroad line near Zap, North Dakota. As you provided, the proposal may involve the removal of rails and ties but would leave the roadbed intact. Based on the described activity an NDPDES permit would not be required since there will be little or no grading disturbance. Projects disturbing more than one acre are required to have a NDPDES permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover.

Even though a permit may not be required, we do recommend that Best Management Practices be followed during the course of the project to prevent dirt, construction debris and waste material from entering a storm drainage system or water body.

Should you have any questions, please contact me at 701-328-5244

Sincerely,

Randy Kowalski  
Environmental Scientist  
Division of Water Quality

---

Environmental Health  
Section Chief's Office  
701-328-5150

Air  
Quality  
701-328-5188

Municipal  
Facilities  
701-328-5211

Waste  
Management  
701-328-5166

Water  
Quality  
701-328-5210



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
1513 S. 12<sup>TH</sup> STREET  
BISMARCK, NORTH DAKOTA 58504-6640**

December 15, 2003

North Dakota Regulatory Office

[200360617]

Mr Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606-6677

Dear Mr. Nettles

This is in reference to your request dated December 8, 2003 on behalf of Burlington Northern Santa Fe Railway Company for a Department of the Army (DA) permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. You propose to abandon 3.36 miles of railroad line between M.P. 77.14 at Antelope Valley Station, North Dakota to M.P. 80.50 in Zap, North Dakota, Mercer County, North Dakota.

Based on the information provided to this office, it has been determined that your proposed project, as presently designed, would be accomplished above Section 10/404 jurisdictional boundaries and therefore, a Section 10/404 permit would not be required. However, DA authorization may be required should changes be made in your project.

The fact that a Section 10/404 permit is not required does not relieve you of the obligation to obtain required approvals from other agencies that may have regulatory jurisdiction over your project.

If you have any questions concerning this determination, please contact this office by letter or telephone me at 255-0015, and reference Identification Number 200360617.

Sincerely,

*Daniel E. Cummings*

*for* James L Winters  
Regulatory Program Manager  
North Dakota

Mercer County  
**Office of Emergency Services**

Mercer County Courthouse  
P.O. Box 39  
Stanton, ND 58571

Phone 701-745-3695  
Fax 701-745-3205  
[rsorenso@state.nd.us](mailto:rsorenso@state.nd.us)

December 22, 2003

Mr. Brian Nettles, Paralegal  
Freeborn & Peters  
311 South Wacker Drive – Suite 3000  
Chicago, Illinois 60606-6677

RE: The Burlington Northern and Santa Fe Railway Company abandonment of Antelope Valley, North Dakota and Zap, North Dakota.

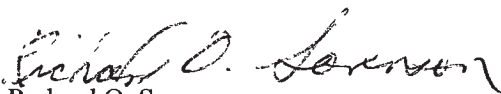
Dear Mr Nettles:

The abandonment of 3.36 miles of railroad line as shown on the attached location map should not adversely affect any 100-year floodplains provided that

- The roadbed along with drainage culverts and structures are left in place.
- That if the wood timber bridge spanning Spring Creek within the City of Zap is removed, that all components be removed to ground level above the water line and to the stream bed below the water line. No bridge components should be left in place that may catch ice, debris, or any manner restricts the natural flow of the stream.

If further information is needed, please feel free to contact me

Sincerely,



Richard O. Sorenson  
Mercer County Emergency Manager/  
Mercer County Floodplain Manager

Enclosure: As noted above

Copy to: Mr. Gary Murray, County Commission Chairman  
Mr. Wayne Entze, County Commissioner  
Mr. Lyle Latimer, County Commissioner  
Mrs. Sandra Bohrer, County Auditor



Freeborn & Peters LLP

December 8, 2003

Mercer County Emergency Manager  
P O Box 39  
Mercer County Courthouse  
Stanton, ND 58571-0039

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
of Antelope Valley, North Dakota and Zap, North Dakota***

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312 360 6000

Brian Nettles  
Paralegal  
Direct 312 360 6336  
Fax 312 360 6596  
bnettl@  
freebornpeters.com

Dear Sir or Madam

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 3.36 miles of railroad line between M P 77.14 at Antelope Valley Station, North Dakota to M P. 80.50 in Zap, North Dakota

As part of the environmental report BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8 & 1/2 by 11 black and white maps in the area of each designated floodplain if they are available.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

*Chicago*

*Springfield*

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by January 8, 2004. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

**Abandonment Documentation (M.P. 77.14 to M.P. 80.50)**

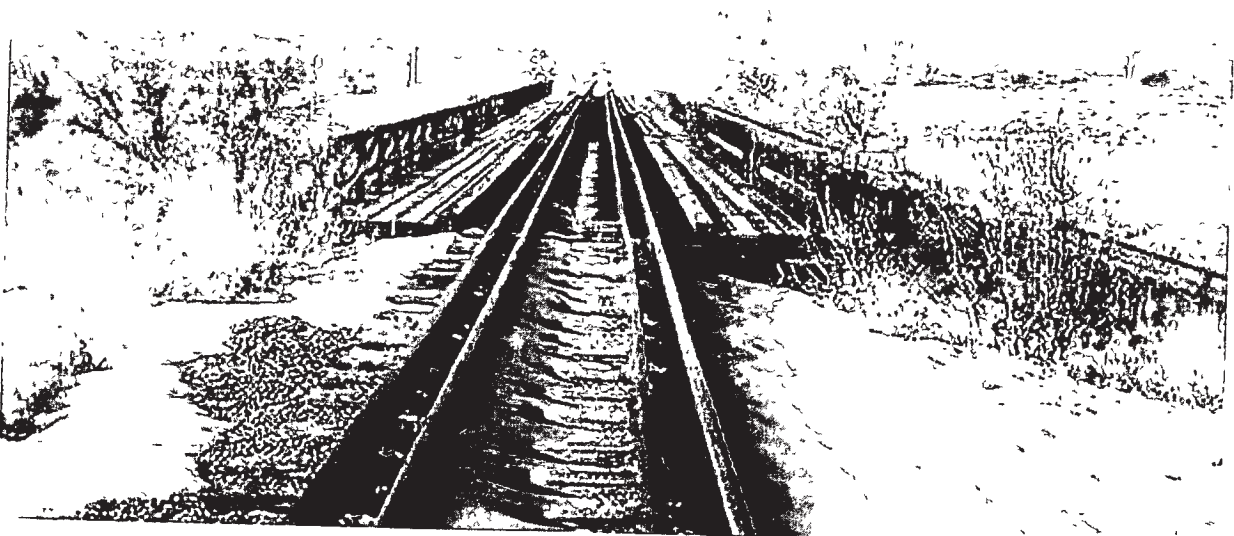
List of Bridges

Bridge.	79 33	Built. 1930	Length	230'	Height	31'	Description	Open Pile Trestle	Obstacle	Spring Creek
Bridge	80 08	Built 1947	Length	231'	Height	28'	Description	Open Pile Trestle	Obstacle	Spring Creek

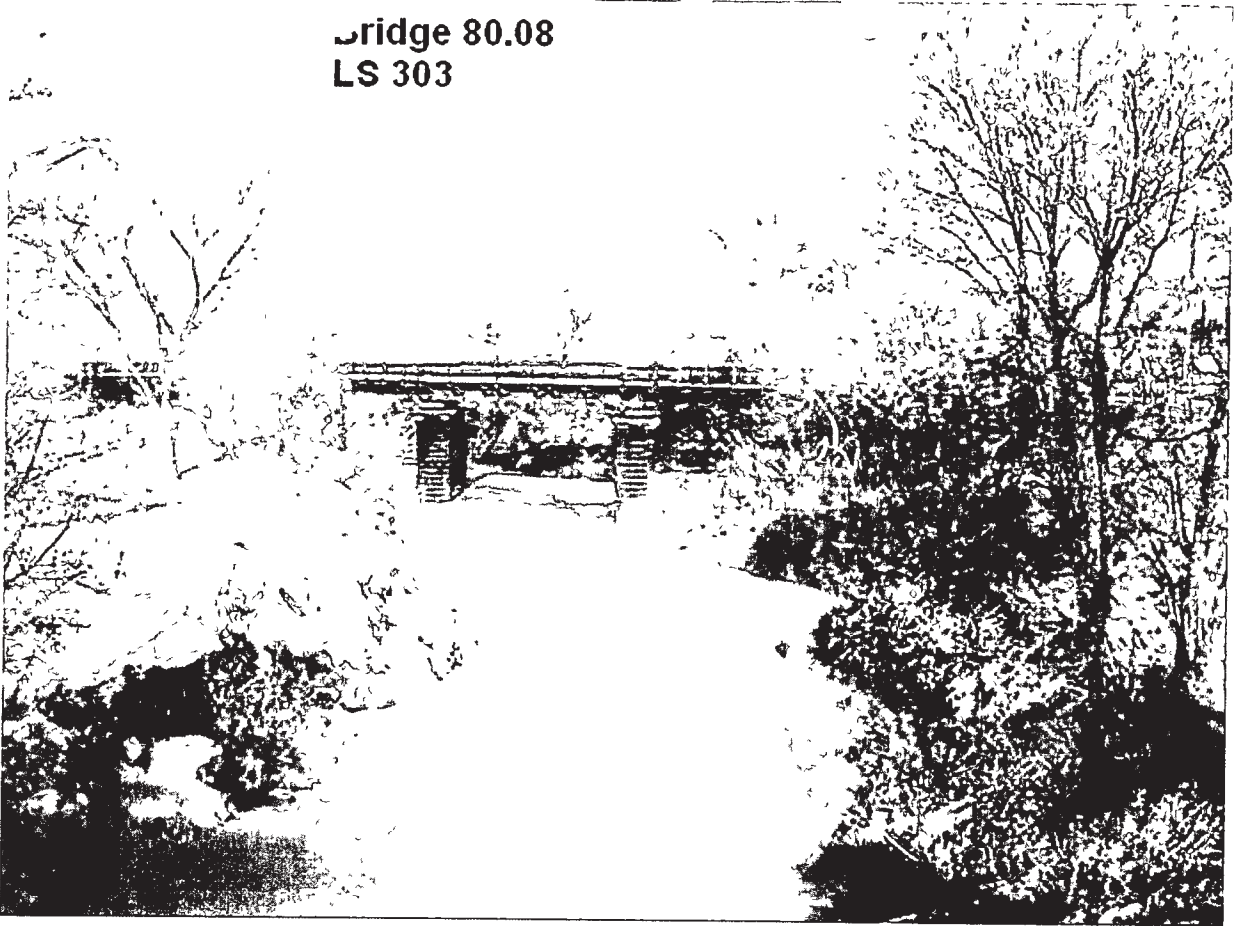
Bridge 79.33  
LS 303



Bridge 79.33  
LS 303



**Bridge 80.08  
LS 303**



**Bridge 80.08  
LS 303**





**STATE  
HISTORICAL  
SOCIETY**  
OF NORTH DAKOTA

John Hoeven  
*Governor of North Dakota*

January 22, 2004

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Chicago, IL 60606-6677

**NDSHPO REF.: 04-0221**, Proposed BN&SF Railway Co. Abandonment,  
Antelope Valley Station to Zap, Mercer County, ND.

Dear Mr. Nettles:

We have reviewed Project: 04-0221, proposed abandonment of the Burlington Northern and Santa Fe Railway Company line between the Antelope Valley Station and Zap, North Dakota.

We recommend that a Class I Cultural Resources Inventory (i.e., files search) of the Area of Potential Effect (APE) be prepared and submitted to our office for consultation. The results of the files search should include a short report detailing all cultural resources (including potential or actual historic properties) in the legal sections of the APE and 7.5' topographic maps with the cultural resource locations and previously inventoried areas plotted and marked on it.

We also recommend that the two bridges be formally recorded on NDCRS site forms. The recording should be completed by a state permitted cultural resource firm/architectural historian, and include preliminary evaluations. We have previously provided your office with a list of state permitted firms.

Thank you for the opportunity to review this project. Please include the ND SHPO Reference number listed above in any further correspondence for this specific project. If you have any questions please contact Duane Klinner at (701) 328-3576.

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer  
(North Dakota)