

209864



January 14, 2004

Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 406X);
The Burlington Northern and Santa Fe Railway Company
Abandonment of South Hutchinson, Kansas**

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 Ms. Rutson:

On or after February 4, 2004, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon or discontinue service of 2.88 miles of railroad line between 0.62 and Milepost 3.50 near South Hutchinson, Kansas, which traverses through United States Postal ZIP Codes 67501 and 67505 in Reno County, Kansas. Attached are the original and ten copies of the Environmental and Historic Report describing the proposed action and any expected environmental or historic effects, as well as a map of the affected area.

Sincerely,

Michael A. Smith

Chicago

Springfield

Enclosures

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209864

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. 0.62 and M.P. 3.50
in South Hutchinson, Kansas

ENTERED
Office of Proceedings

JAN 15 2004

Part of
Public Record

Docket No. AB-6
(Sub No. 406X)



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. 0.62 and M.P. 3.50 in South Hutchinson, Reno County, Kansas, total distance of 2.88 miles.

(1) Proposed action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any railline 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 not be inconsistent with local or regional land use plans. The Reno County Board of Commissioners were notified by letter dated August 5, 2003. See Exhibit B, letter to the Board of Commissioners, Reno County, Kansas. As of the date of this report, the 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 believes that the proposed exemption will not have any effect on prime agricultural land. The Natural Resources Conservation Service has been notified by letter dated August 5, 2003. See Exhibit C. As of the date of this report, the Natural Resources 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 Reno County Board of Commissioners was notified by letter dated August 5, 2003. See Exhibit B, letter to the Board of Commissioners, Reno County, Kansas. As of the date of this report, the Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive. The city of South Hutchinson, Kansas has expressed interest in acquiring the right of way for a recreational trail.

(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 2 public crossings and 2 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.

There is no 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 proposed abandonment will have no adverse impacts to fish and wildlife resources, including threatened and endangered species. See Exhibit D, letter from the U.S. Fish and Wildlife Service. The proposed abandonment will have no significant impacts to crucial wildlife habitats or any currently listed threatened or endangered species in need of conservation. See Exhibit E, letter from Kansas Department of Wildlife and Parks.

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

The project will not impact any public recreational areas. See Exhibit E, letter from the Kansas Department of Wildlife and Parks. There are no Federal lands administered by the Bureau of Land Management along the proposed abandonment. 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 Kansas Department of Health and Environment was notified by letter dated August 5, 2003. See Exhibit G As of the date of this report, the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

(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.

Permits under 404 of the Clean Water Act are not required for the proposed exemption. See Exhibit H, letter from the Army Corps of Engineers. The proposed exemption will not affect the 100-year floodplain. See Exhibit I, letter from the Reno County Emergency Management.

(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.

BNSF believes that permits under 402 of the Clean Water Act are not required for the proposed exemption. The Kansas Department of Health and Environment was notified by letter dated August 5, 2003. See Exhibit G. As of the date of this report, the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

(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: January 12, 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. 0.62 and M.P. 3.50
in South Hutchinson, Kansas

Docket No. AB-6
(Sub No. 406X)

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. 0.62 in to M.P. 3.50 near South
Hutchinson, Kansas a total distance of 2.88 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 Kansas State
Historical Society 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 South Hutchinson, Kansas Trackage is located adjacent and southwest of the town of South Hutchinson, a suburb of Hutchinson, Kansas. Hutchinson has a population of 40,787 and South Hutchinson has a population of 2,539. The land adjoining the right of way is generally flat with rural and suburban uses. The right of way is 100 feet wide.

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

There are no bridges that are 50 years or older in the immediate area of the abandonment.

(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;

N/A

(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 Hutchinson & Southern Railway Company (H&S) between 1896 and 1899. The H&S was a predecessor to The Atchison Topeka and Santa Fe Railway Company (ATSF). In 1995 the ATSF merged with the Burlington Northern Railroad (BN) in 1995 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);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. The proposed abandonment should have no effects on any property listed on the National Register of Historic Places or otherwise identified in the files of the Kansas State Historical Society as having historical significance. See Exhibit J, letter from the Kansas State 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: January 12, 2004

A

SOUTH HUTCHINSON, KANSAS TRACKAGE

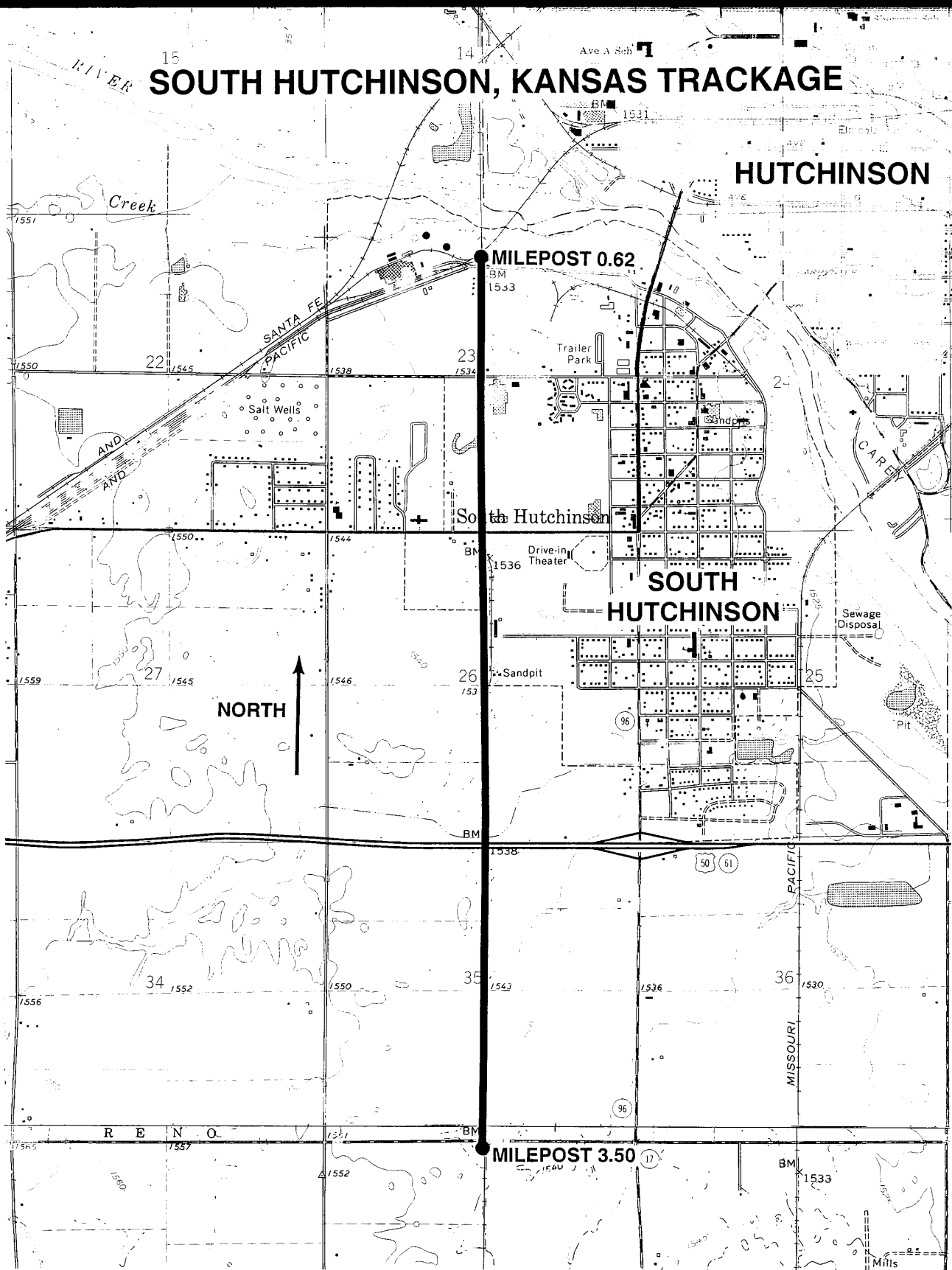
HUTCHINSON

MILEPOST 0.62

SOUTH HUTCHINSON

NORTH

MILEPOST 3.50





Freeborn & Peters LLP

August 5, 2003

Reno County Commission
206 West First Street
County Courthouse
Hutchinson, Kansas 67501-5204

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

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of South Hutchinson, Kansas***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.62 and Milepost 3.50 near South Hutchinson, Kansas.

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. Please provide this information by September 5, 2003. 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

C

Freeborn & Peters LLP

August 5, 2003

Natural Resources Conservation Service
South Hutchinson Service Center
18 East 7th Street
South Hutchinson, KS 67505

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of South Hutchinson, Kansas***

Attorneys at Law

311 South Wacker Drive
Suite 3000
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60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.62 and Milepost 3.50 near South Hutchinson, Kansas.

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 September 5, 2003. Thank you for your cooperation.

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

D



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

September 2, 2003

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

RE: South Hutchinson, Kansas

Dear Mr. Nettles:

This is in response to your letter of August 5, 2003, describing a Burlington Northern and Santa Fe Railway Company proposed abandonment of 2.88 miles of existing railway line near South Hutchinson, in Reno County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to this proposal as planned.

The Service encourages the Burlington Northern and Santa Fe Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on the proposal.

Sincerely,

William H. Gill
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

E

KANSAS

Pratt Operations Office

U.S. Fish & Wildlife Service, US DOW, PRATT

September 2, 2003

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

Ref: D2.0401
Reno
Milepost / 0.62-3.50
Track: 20030472

Dear Mr. Nettles:

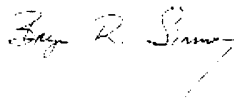
We have reviewed preliminary railway abandonment of the Burlington Northern Santa Fe Railway Company involving 2.88 miles between Milepost 0.62 and 3.50 in South Hutchinson, Reno County, Kansas. The project was reviewed for potential impacts on crucial wildlife habitats, current state-listed threatened and endangered species and species in need of conservation and public recreation areas for which this agency has some administrative authority.

We have no objections to this project as it is currently designed. We would only recommend to minimize any existing instream construction activities while implementing standard erosion control BMP's, temporary weed-free seeding/mulching to protect water quality during construction, and the use of native grasses and forbs to permanently revegetate any and all areas disturbed by abandonment activities.

Results of our review indicate there will be no significant impacts to crucial wildlife habitats; therefore, no special mitigation measures are recommended. The project will not impact any public recreational areas, nor could we document any potential impacts to currently listed threatened or endangered species or species in need of conservation. No Department of Wildlife and Parks permits or special authorizations will be needed if construction is started within one year, and no design changes are made in the project plans. Since the Department's recreational land obligations and the State's species listings periodically change, if construction has not started within one year of this date, or if design changes are made in the project plans, the project sponsor must contact this office to verify continued applicability of this assessment report. For our purposes, we consider construction started when advertisements for bids are distributed.

Thank you for the opportunity to provide these comments and recommendations.

Sincerely,



Bryan R. Simmons,
Aquatic / Terrestrial Ecologist
Environmental Services Section

Pratt Operations Office

512 SE 25th Ave., Pratt, KS 67124-8174
Phone 620-672-5911 Fax 620-672-6020 www.kdwp.state.ks.us

F



IN REPLY REFER TO:
2800 (NM0930) P

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Amarillo Field Office - Helium Operations

801 South Fillmore, Suite 500

Amarillo, Texas 79101-3545

www.nm.blm.gov

August 11, 2003

Mr. Brian Nettles
Freeborn and Peters
311 South Wacker Drive
Chicago, IL 60606-6677

Dear Mr. Nettles:

With regards to the BNSF's plans to file an exemption to abandon its line of railroad near Hutchinson, Kansas (between milepost 0.62 and milepost 3.50), the Bureau of Land Management has no public lands or minerals that would be impacted.

Sincerely,

Timothy R. Spisak
Amarillo Field Office Manager

G

Freeborn & Peters LLP

August 5, 2003

Karl Mueldener, Director
Kansas Department of Health and
Environment
Division of Environment
Bureau of Water
1000 SW Jackson St., Suite 420
Topeka, KS 66612-1367

Attorneys at Law

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Fax 312.360.6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of South Hutchinson, Kansas***

Dear Mr. Mueldener:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.62 and Milepost 3.50 near South Hutchinson, Kansas.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or NPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

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

Chicago

Springfield

H



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
STATE REGULATORY PROGRAM OFFICE - KANSAS
2710 N.E. SHADY CREEK ACCESS ROAD
EL DORADO, KANSAS 67042

REPLY TO
ATTENTION OF:

August 21, 2003

Kansas State Regulatory Office
(200302158)
(Reno, KS, NPR)

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

Dear Mr. Nettles:

This is in response to your letter received on August 11, 2003, requesting a Department of the Army (DA) permit determination concerning the abandonment of 2.88 miles of BNSF railroad line. The project will cross over an unnamed tributary to Sand Creek; however, your letter stated that there will not be a discharge of dredge or fill material into jurisdictional waters of the U.S., including wetlands. The project is located in Sections 23, 26, and 35, all in Township 23 south, Range 6 west, Reno County, Kansas.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

The enclosed Jurisdictional Determination (JD) form describes the extent of waters of the United States on the project site. Also, the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section E of the FORM.

We have reviewed the information furnished and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Ms. Sarah M. Reznicek, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Ms. Reznicek at 316-322-8247 (FAX 316-322-8259).

Enclosures

Copies Furnished:
Environmental Protection Agency, Water Resources Protection Branch wo/enclosure
Kansas Department of Wildlife and Parks wo/enclosure
Kansas Department of Agriculture wo/enclosure

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Kansas City District

APPLICANT: Burlington Northern And Santa Fe Railway Company NUMBER: 200302158

LOCATION/WATERWAY: Unnamed tributary to Sand Creek/ S23 26 35 T23S R6W

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

JURISDICTIONAL DETERMINATION (JD) (For sites regulated under 33 CFR 320-330):

- ☒ Preliminary JD – Based on available information, there appear *to be* waters of the U.S. on the project site. A preliminary JD is not appealable.
- ☐ Approved JD – There *are* waters of the United States on the project site, as identified in the basis of jurisdiction determination indicated below. An approved JD is an appealable action (33 CFR 331). (Note: JDs prepared by the U.S. Environmental Protection Agency are appealable to the Corps of Engineers.)

BASIS FOR JURISDICTIONAL DETERMINATION:

Waters defined under 33CFR 328.3(a) as "waters of the United States:"

- ☐ (1) The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands¹.
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could effect interstate commerce including any such waters:
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters defined as a Water of the U.S.
- ☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☐ (6) The presence of territorial seas.
- ☐ (7) The presence of wetlands adjacent² to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.

Waters defined under 33CFR 329 as "navigable waters of the United States:"

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Rationale for Basis (Applies to any boxes checked above): Sand Creek is a tributary to the Arkansas River; however there will not be discharge of dredge or fill material into any jurisdictional waters of the U.S., including wetlands.

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

- | | |
|--|--|
| <p>☐ Ordinary High Water Mark indicated by:</p> <ul style="list-style-type: none">☐ clear, natural line impressed on the bank☐ the presence of litter and debris☐ changes in the character of soil☐ destruction of terrestrial vegetation☐ shelving☐ other (hydrologic study, etc.): _____ | <p>☐ High Tide Line indicated by:</p> <ul style="list-style-type: none">☐ oil or scum line along shore objects☐ fine shell or debris deposits (foreshore)☐ physical markings/characteristics☐ tide gages☐ other: _____ |
|--|--|
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline³
- ☐ Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by _____, and dated _____
- ☐ Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

Preparer: Regulatory Specialist, Sarah Reznicek Date: 21 August 2003

¹ Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

² The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

³ Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Burlington Northern and Santa Fe R.R.		File Number: 200302158	Date: 21 Aug 2003
Attached is:		See Section below	
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)		A
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)		B
	C. PERMIT DENIAL		C
	D. APPROVED JURISDICTIONAL DETERMINATION		D
X	E. PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

- A. Modification of an INITIAL PROFFERED PERMIT (Item A).
- D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B).
- C. Administrative Appeal of a PERMIT DENIAL (Item C).
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER

Attn: Joseph Hughes

Chief Regulatory Branch

U.S. Army Engineer District, Kansas City

601 East 12th Street, Room 706

Kansas City, MO 64106-2896

Telephone: 816-983-3990

(Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:

DIVISION ENGINEER

Attn: Mores V. Bergman

Appeal Review Officer

U.S. Army Engineer Division, Northwestern Division

12565 West Center Road

Omaha, NE 68144-3869

Telephone: 402-697-2533

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

I



**Emergency Management
Fire Service Administration**

RENO COUNTY
206 West First Ave
Hutchinson, Kansas 67501
(620) 694-2974- Fax (620) 694-2794
TDD: Kansas Relay 1-800-766-3777

August 19, 2003

Freeborn & Peters LLP
311 S. Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677
Attn: Brian Nettles

Dear Brian

In reference to your letter dated August 5, 2003, subject Burlington Northern and Santa Fe Railway Abandonment. I have talked with the Planning Zoning and Utilities Director, David McComb, The County Engineer, Flood Plain Manager, Dean Chesnut and neither one have a concern about the flood plain issue. Mr. Chesnut did express a concern on any structures along this stretch of track that may need to be removed. His concern is that of debris getting caught up on the structure and causing problems. He requests that any structure along this route also be removed. Mr. Chesnut has also been in contact with the City of South Hutchinson and they have no other problems with this issue.

If you have any questions please feel free to contact me at the above listed address or phone number.

Sincerely,

William R. Guy Jr., KCEM
Director

J

KANSAS

KSR&C No. 03-12-

Kansas State Historical Society
Dick Pankratz, *Director, Cultural Resources Division*

KATHLEEN SEBELIUS, GOVERNOR

December 15, 2003

Brian Nettles
Freeborn & Peters LLP
311 S Wacker Dr Ste 3000
Chicago IL 60606-6677

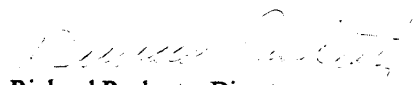
Re: Abandon BNSF Track Between Milepost 0.62 and Milepost 3.50, South Hutchinson
Reno County

Dear Mr. Nettles:

We have reviewed the project identified above and have determined that it should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historical significance. This office has no objection to implementation of the project.

Sincerely yours,

Mary R. Allman
State Historic Preservation Officer



Richard Pankratz, Director
Cultural Resources Division

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