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2401 PENNSYLVANIA AVENUE, NW
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ENTERED
Office of Proceedings
April 20, 2022
Part of
Public Record

CRYSTAL M. ZORBAUGH

(202) 663-7831 (Direct Dial)
E-Mail: czorbaugh@bakerandmiller.com

April 20, 2022

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Red River Valley & Western Railroad Company – Abandonment Exemption – Cass County, North Dakota, AB-391 (Sub-No. 11x)

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances Red River Valley & Western Railroad Company is filing a verified notice of exemption to abandon rail service over an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND) in Cass County, North Dakota. A \$4,400.00 filing fee has been paid via Pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com. If I am unavailable, you may contact Spencer Naake, who can be reached at (202) 663-7829 or by e-mail at snaake@bakerandmiller.com.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Red River Valley & Western
Railroad Company

Enclosures

FILED
April 20, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 20, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

**William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7831
Fax: (202) 663-7849**

April 20, 2022

**Attorneys for Red River & Western
Railroad Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

Red River Valley & Western Railroad Company (“RRVW”) hereby submits the following notice of exemption pursuant to 49 C.F.R. Part 1152, Subpart F (Exempt Abandonments and Discontinuances of Service), to abandon an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND)¹ in Cass County, North Dakota.² As noted in FN 1, the real estate comprising the Line’s right-of-

¹ RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of the acquisition of 656 miles of rail line from BNSF in 1987. See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (S.T.B. served July 22, 1987). BNSF retained the real estate underlying the Line.

Around 2010, the RRVW siding serving the Line’s sole shipper, CHS Dakota Plains Ag, was shortened, and the mainline track was realigned to RRVW’s mainline track to reconnect with the shortened siding at a new switch location. This relocation was not subject to the Board’s jurisdiction because the relocation had no effect on (1) service to shippers; (2) the carrier’s territory or traffic; (3) competition; or (4) the carrier’s revenue or operating expenses.” See BNSF Ry. Co. - Petition for Declaratory Order; BNSF Ry. Co.-Abandonment Exemption-in Oklahoma Cnty., OK, FD 35164, STB Docket No. AB-6 (Sub-No, 430X) (S.T.B. served May 20, 2009) (confirming such relocation projects are outside the Board’s jurisdiction). As a result of the 2010 relocation, RRVW’s Line’s starting milepost became 9.36 and the portion of RRVW’s line between milepost 8.5 and 9.36 was permanently removed from the Board’s jurisdiction. Upon the Board exempting this abandonment and RRVW consummating the abandonment authority granted, the new starting point of the Line will become milepost 11.65 (near Horace ND).

² RRVW is filing for abandonment authority at the request of the Metro Flood Diversion Authority (“MFDA”) to accommodate an important public project, which involves MFDA

way is owned by BNSF Railway.³ BNSF fully supports the abandonment of the Line and plans to sell the Line's underlying real estate to MFDA to accommodate the flood control project. A letter of support from BNSF is attached as **Exhibit A**. A letter from RRVW's sole shipper, CHS Dakota Plains Ag, is included as **Exhibit B**. In accordance with the requirements of 49 C.F.R. §§ 1152.50(b) and (d), RRVW provides the following information in support of its abandonment notice of exemption:

Certification: 49 C.F.R. § 1152.50(b)

RRVW certifies that the Line satisfies the criteria for abandonment under the exemption provisions at 49 C.F.R. Part 1152, Subpart F. See Combined Certification and Verification of Victor Meyers, President of RRVW attached hereto as Exhibit C. During the past two years, RRVW has provided no local or overhead traffic over the Line; overhead traffic, if there were any, could be rerouted over other lines; and no formal complaint has been filed by a user of rail service on the Line or a state or local government entity acting on behalf of such user regarding cessation of service over the Line either pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year-period.

Id.

acquiring the railroad right-of-way and constructing a large drainage ditch facility at approximately milepost 11. The drainage ditch facility is critically important to address flooding issues facing the immediate region. The Line previously served one shipper who is currently in the process of relocating and who last received rail service in March 2020. As such, no rail shippers will be adversely impacted by the proposed abandonment.

³ RRVW and BNSF originally entered a contract for deed of sale on July 13, 1987 (lease with the option to purchase the real estate underlying the Line) on July 23, 2027. See Railroad Acquisition; Red River Valley & W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD No. 31071 (S.T.B. served July 13, 1987); James Valley Grain, LLC v. BNSF Ry. Co., STB Docket No. 42139, Exhibit A (S.T.B. served March 10, 2014). Given the pending public project, RRVW will not be exercising its option.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

The abandonment will be consummated on or after June 9, 2022 (50 days after filing the notice of exemption).

Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)

Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):

Red River Valley & Western Railroad Company

Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):

RRVW is a Class III common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV.

Relief sought (49 C.F.R. § 1152.22(a)(3)):

RRVW is invoking the Board's two-year-out-of-service class exemption procedures to abandon approximately.

Map (49 C.F.R. § 1152.22(a)(4)):

A detailed map showing the location of the Line is attached hereto as **Exhibit D**.

Applicant's representative (49 C.F.R. § 1152.22(a)(7)):

RRVW's representative to whom correspondence regarding this abandonment should be sent is as follows:

William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):

The Line traverses U.S. Postal Service **ZIP** Code territory 58047.

Suitability of the Line for Other Public Purposes (49 C.F.R. § 1152.22(e)(4)):

This abandonment has been undertaken solely to accommodate an MFDA public use project (flood control) at milepost 11. A letter of support from MFDA, outlining the Fargo-Moorhead Area Diversion Project, is attached as **Exhibit E**. As such, RRVW is unwilling to negotiate alternative public use(s) for the corridor, such as railbanking. As noted previously, the real estate comprising the Line's right-of-way is owned by BNSF Railway. It is RRVW's understanding that upon RRVW being granted abandonment authority, BNSF plans to sell the Line's underlying real estate to MFDA to accommodate the flood control project. Based on RRVW's knowledge and belief, the Line does not contain any federally granted right-of-way.

Labor Protection

Because the Line has not been utilized to provide common carrier service to shippers for over two years, no railroad employees will be adversely affected by the exercise of abandonment authority. Nevertheless, the interests of RRVW's employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Certifications

Attached hereto as **Exhibit F** are Certificates of Service and Publication certifying that RRVW has complied with the notice and newspaper publication requirements set forth at 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1105.12, respectively. Attached as **Exhibit G** is a certification of compliance with the advance notice requirements for Environmental and Historic Reports as set forth at 49 C.F.R. § 1105.11.

Environmental and Historic Report

As is reflected in the certificate of compliance with the provisions of 49 C.F.R. § 1105.11 (see **Exhibit G**), RRVW has prepared a combined Environmental and Historic Report

(“E&HR”) in anticipation of the proposed abandonment portion of the proceeding, which conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. A copy of the E&HR is attached hereto as Attachment 1 to **Exhibit G** (§ 1105.11 certification).

Respectfully submitted,

/s/ *Crystal M. Zorbaugh*

William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

April 20, 2022

Attorneys for Red River Valley & Western
Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT A

BNSF SUPPORT STATEMENT



Merril Lieb
AVP Shortline Development

BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161
2500 Lou Menk Drive, AOB-1
Fort Worth, TX 76131-2828
(817) 867-2270
(817) 352-7154 fax
Merril.Lieb@BNSF.com

March 23, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption –
In Cass County, ND, AB-391 (Sub-No. 11X)

Dear Victor:

BNSF Railway (“BNSF”) is writing to support Red River Valley & Western Railroad Co.’s (“RRVW”) abandonment of approximately 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota (hereinafter, the “Line”). BNSF retained the real estate underlying the Line when it sold the Line to RRVW as part of RRVW’s 1987 acquisition.¹ BNSF fully supports RRVW’s abandonment of the Line. Upon consummation of RRVW’s abandonment authority and as part of a related transaction, BNSF will convey the real estate underlying the Line to Fargo Moorhead Diversion Authority (“FMDA”) to accommodate the Fargo Moorhead Diversion Authority flood control project. If you need any further information, please do not hesitate to contact me by telephone at (817) 867- 2270 or by email merril.lieb@bnsf.com.

Thank you,

DocuSigned by:

EEEEBC56127EB418...

Merril Lieb,
AVP Shortline Development

¹ RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of the acquisition of 656 miles of rail line from BNSF in 1987. See Red River Valley and Western Railroad Co.; Acquisition and Operation Exemption; Certain Lines of Burlington Northern Railroad Co., FD 31071 (STB served July 22, 1987).

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT B

CHS DAKOTA PLAINS AG

SUPPORT LETTER



Dakota Plains Ag
P. O. Box 265 Kindred, ND 58051

701.428.3134
701.428.3137 fax

March 15, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In
Cass County, ND, AB-391 (Sub-No. 11X)

Dear Victor:

CHS Dakota Plains Ag (“CHS”) is in the process of relocating our operations from our Horace, North Dakota facility to our Kindred, North Dakota facility. Accordingly, we are writing to confirm that CHS will no longer need rail service at our location at 301 Main Street, Horace, North Dakota; and, as a result, CHS, fully supports Red River Valley & Western Railroad Co.’s (“RRVW”) plans to abandon operations over 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota¹ to accommodate the Fargo Moorhead Diversion Authority flood control project (“FMDA Project”). For the past decade, CHS has been the sole shipper served by RRVW over the segment proposed for abandonment.

We are grateful for RRVW’s coordination with CHS related to its proposed abandonment and relocation, which is also being driven by the FMDA Project. We look forward to continuing to be your customer at other North Dakota locations.

Thank you,

Dennis J Novacek
Dakota Plains Ag
General Manager

¹ CHS has been a customer of RRVW, since 1987. Around 2010, the RRVW siding that served CHS was shortened and realigned to RRVW’s mainline track to reconnect the shortened siding to a new switch location as part of a relocation project to remove grade crossings in connection with Cass County, ND efforts to improve safety.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT C

**COMBINED CERTIFICATION AND
VERIFICATION**

COMBINED CERTIFICATION AND VERIFICATION

I, Victor Meyers, President of Red River Valley & Western Railroad Company (“RRVW”) hereby verify and certify that no local traffic has moved over RRVW’s rail line extending from milepost 9.36 to milepost 11.65 (at Horace, ND) in Cass County, North Dakota, for at least two years. I also hereby verify and certify that there is no overhead traffic on the Line that has been, or would need to be, rerouted as a result of the proposed abandonment.

I further verify and certify that no formal complaint filed by a user of rail service on the Line (or filed by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with this Board or any U.S. District Court or has been decided in favor of the complainant within the said two-year period. Lastly, I certify that I am duly authorized to make this Combined Certification and Verification pursuant to 28 U.S.C. 1746 and that under penalty of perjury to the best of my knowledge, the foregoing abandonment notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of RRVW in connection with this proceeding before the Surface Transportation Board.

Dated: April 14, 2022



Victor Meyers
Red River Valley & Western Railroad
Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

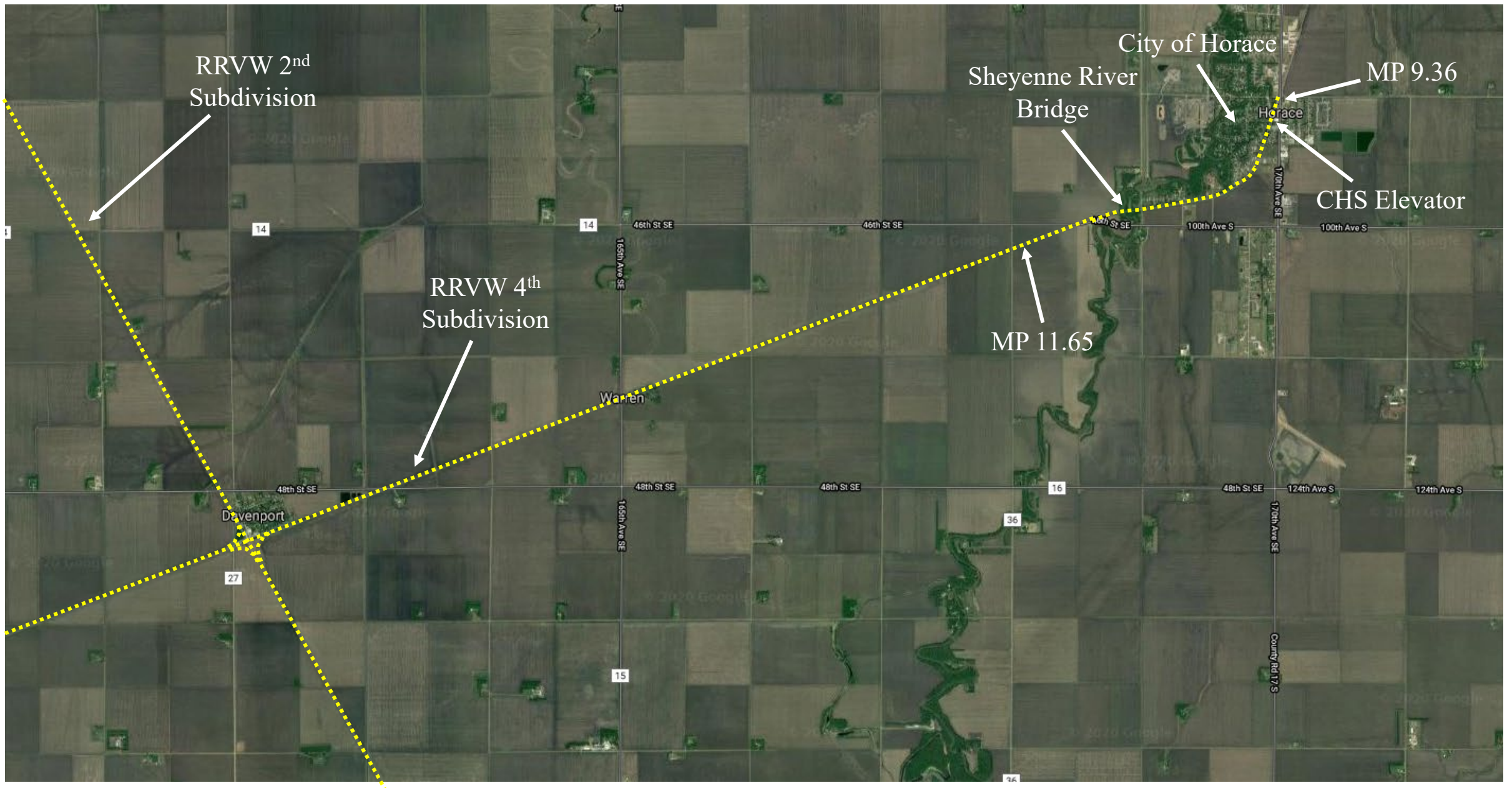
AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT D

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT E

MFDA SUPPORT STATEMENT

March 18, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In Cass County, ND, AB-391
(Sub-No. 11X)

Dear Victor,

The Fargo-Moorhead Area Diversion Project (the “Project”) was developed by the U.S. Army Corps of Engineers and the Metro Flood Diversion Authority (“MFDA”) to protect the Fargo-Moorhead-West Fargo metro area during times of extreme flooding. The Project, once completed, will protect more than 235,000 people from potentially catastrophic flooding through the implementation of various protective measures.¹

The Project began construction in early 2017 and is estimated to cost \$2.75 billion (2018\$) and has received funding from the federal government, the state of North Dakota, the state of Minnesota, and local sponsors.

As you are aware, the MFDA requested that Red River Valley & Western Railroad (“RRVW”) file for abandonment authority to accommodate this important Project, which specifically involves the MFDA acquiring the railroad right-of-way and constructing a stormwater diversion channel facility at approximately milepost 11. Accordingly, MFDA fully supports RRVW’s plans to abandon operations over 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota.

We request that the Surface Transportation Board (STB) expeditiously grant RRVW’s abandonment, which was undertaken at the request of MFDA. Acquisition of the abandoned railroad corridor from RRVW and BNSF (owner of the underlying real estate) is critically necessary to protect the Fargo-Moorhead-West Fargo metro area from potentially catastrophic flooding. Please let us know if you have any questions concerning this important public project. I can be reached by phone 701-781-4758 or by email PaulsenJ@fmdiversion.gov

Thank you,


Joel Paulsen, PE
Executive Director

¹ The Project includes river control structures with radial-arm flood gates controlling the levels of water flowing into the metro area through the Red and Wild Rice Rivers. Floodwalls and levees in Fargo and Moorhead will allow up to 37 feet of water to run through the town. The Project will also include a 20-mile southern embankment to keep floodwaters out of the metro area; a 30-mile stormwater diversion channel to allow for floodwaters to safely flow westerly and northerly around the metro area; and an upstream mitigation area used to temporarily store floodwaters to minimize downstream impacts.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT F

**CERTIFICATIONS OF
SERVICE/PUBLICATION**

Certificate of Service

49 C.F.R. § 1152.50(d)(1) – Notice

I certify that, in accordance with the requirements of 49 C.F.R. § 1152.50(d)(1), on March 29, 2022, I served the following parties with the written notice of intent of Red River Valley & Western Railroad Company, to use the Board's notice of exemption procedures to abandon approximately 2.29 miles of railroad line located in Cass County, North Dakota. I further certify that the Line does not contain federally-granted right-of-way.

Public Service Commission, et al.

Julie Fedorchak, Commissioner
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

DOT/PUC

William T. Panos, Director
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)

David Dorfman
Headquarters Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

The National Park Service, Recreation Resources Assistance Division

Stephen Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

David Thomson
National Park Service, Midwest Region
Rivers, Trails and Conservation Assistance Program
601 Riverfront Drive
Omaha, NE 68102-4226

U.S. Department of Agriculture, Chief of the Forest Service

Randy Moore, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

April 20, 2022

/s/ *Crystal M. Zorbaugh*
Crystal M. Zorbaugh
Attorney for Red River Valley & Western
Railroad Company

Certificate of Publication

49 C.F.R. 1105.12 – Newspaper Notice

I certify that a “Notice of Intent to Abandon” was published in the form prescribed by the Board for a Notice of Exemption (49 C.F.R. § 1105.12). The notice was published one time on April 13, 2022, in The Forum of Fargo-Moorhead, a newspaper of general circulation in Cass County, North Dakota, where the rail line is located. See Attachment 1 – Proof of Publication.

April 20, 2022

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh

Attorney for Red River Valley & Western Railroad
Company

AFFIDAVIT OF PUBLICATION

STATE OF NORTH DAKOTA

ss.

COUNTY OF CASS

Taylor Herhold, The Forum of Fargo-Moorhead, being duly sworn, states as follows:

1. I am the designated agent of The Forum of Fargo-Moorhead, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspaper listed on the attached exhibit.
2. The newspaper listed on the exhibit published the advertisement of: ***Legal Notice; (1) time: Wednesday April 13, 2022***, as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

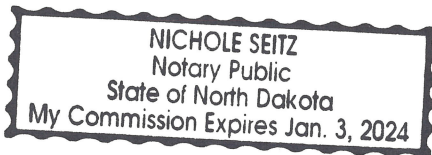
Dated this 13th day of April, 2022



Legals Clerk



Notary Public



**NOTICE OF INTENT TO
ABANDON RAIL SERVICE
AB-391 (Sub-No. 11X)**

Red River Valley & Western Railroad ("RRVW") hereby gives notice that on or about April 18, 2022, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption pursuant to 49 C.F.R. Part 1152 Subpart F — Exempt Abandonments and Discontinuances of Service and Trackage Rights, permitting RRVW to abandon an approximately 2.29-mile rail line (hereinafter, the "Line") extending from milepost 9.36 to milepost 11.65 (at Horace, ND) in Cass County, North Dakota. The Line traverses United States Postal Zip Code territory 58047. By the time RRVW files its abandonment, RRVW would have not provided common carrier service to customers on the Line proposed for abandonment for over two years. The proceeding will be docketed as AB-391 (Sub-No. 11X).

The proposed action entails the abandonment of, and discontinuance of rail service over, the Line. The Board's Office of Environmental Analysis (OEA) generally will prepare an Environmental Assessment (EA), which normally will be available 25 days after the filing of the abandonment 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. Such comments 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 OEA, Surface Transportation Board, 395 E Street, SW, Washington, D.C. 20423, or by calling that office at (202) 245-0295.

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. Because the railroad is seeking abandonment to accommodate an important public project, it will not consent to any trail use requests. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 C.F.R. §§ 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 Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on the applicant's representative: Crystal M. Zorbaugh, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7831; fax 202-663-7849.

(April 13, 2022) 51234

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 1X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

EXHIBIT G

**CERTIFICATION OF COMPLIANCE
WITH ENVIRONMENTAL AND
HISTORIC REPORT REQUIREMENTS**

Certificate of Compliance

49 C.F.R. § 1105.11 – Advance Distribution of Environmental and Historic Report

I hereby certify that, on March 22, 2022, a copy of Red River Valley & Western Railroad Company's Consolidated Environmental and Historic Report for the proposed abandonment encompassed by AB-391 (Sub-No. 11X), accompanied by a transmittal letter conforming to the requirements of 49 C.F.R. § 1105.11, was served upon the following entities as prescribed by 49 C.F.R. §§ 1105.7(b) and 1105.8(c). A copy of the transmittal letter is within the E&HR.

STATE HISTORICAL SOCIETY
State Historical Society of North Dakota
612 East Boulevard Ave.
Bismarck, North Dakota 58505

STATE DOT
Jim Styron
Rail Planner
North Dakota Dept. of Transportation
608 E. Boulevard Avenue, Room 323
Bismarck, North Dakota 58505-0700

US ENVIRONMENTAL PROTECTION
AGENCY
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

REGIONAL/STATE EPA
Kathleen Beck
Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

David Glatt, Director
North Dakota Department of Environmental
Quality
4201 Normandy Street
Bismarck, ND 58503-1324

CITY/TOWNSHIP
Kory Peterson, Mayor
City Hall
P.O. Box 99
Horace, ND 58047

COUNTIES
Mary Scherling
Commissioner, District 5
Cass County Courthouse
211 9th Street South
Fargo, ND 58103

US ARMY CORPS OF ENGINEERS
U.S. Army Corps of Engineers,
St. Paul District
180 5th Street East, Suite 700
St. Paul, MN 55101-1678

STATE COASTAL ZONE
MANAGEMENT
North Dakota Department of Environmental
Quality
Attn: Water Quality
4201 Normandy Street
Bismarck, ND 58503-1324

U.S. FISH AND WILDLIFE SERVICE

Matt Hogan, Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
Region 6 (CO, KS, NE, ND, SD, UT, &
WY)
Lake Plaza North
134 Union Boulevard
Lakewood, CO 80225

U.S. Fish & Wildlife Service
North Dakota Field Office
3425 Miriam Ave
Bismarck, ND 58501

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance
Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Bert Frost, Regional Director
Interior Region 5, Missouri Basin
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch,
NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES

CONSERVATION SERVICE

Mary E. Podoll
State Conservationist
220 East Rosser Avenue
PO Box 1459
Bismarck, ND 58502-1458

April 20, 2022

/s/ *Crystal M. Zorbaugh*

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Attorney for Red River Valley & Western
Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

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March 22, 2022

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Railroad Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

Red River Valley & Western Railroad Company (“RRVW”) submits this Combined Environmental and Historic Report (“E&HR” or “Report”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with RRVW’s proposed abandonment of an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND)¹ in Cass County, North Dakota.²

¹ RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of the acquisition of 656 miles of rail line from BNSF in 1987. See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (S.T.B. served July 22, 1987). BNSF retained the real estate underlying the Line.

Around 2010, the RRVW siding serving the Line’s sole shipper, CHS Dakota Plains Ag, was shortened, and the mainline track was realigned to RRVW’s mainline track to reconnect with the shortened siding at a new switch location. This relocation was not subject to the Board’s jurisdiction because the relocation had no effect on (1) service to shippers; (2) the carrier's territory or traffic; (3) competition; or (4) the carrier's revenue or operating expenses." See BNSF Ry. Co. - Petition for Declaratory Order; BNSF Ry. Co.-Abandonment Exemption-in Oklahoma Cnty., OK, FD 35164, STB Docket No. AB-6 (Sub-No, 430X) (S.T.B. served May 20, 2009) (confirming such relocation projects are outside the Board’s jurisdiction). As a result of the 2010 relocation, RRVW’s Line’s starting milepost became 9.36 and the portion of RRVW’s line between milepost 8.5 and 9.36 was permanently removed from the Board’s jurisdiction. Upon the Board exempting this abandonment and RRVW consummating the abandonment authority granted, the new starting point of the Line will become milepost 11.65 (near Horace ND).

² RRVW is filing for abandonment authority at the request of the Fargo Moorhead Diversion Authority (“MFDA”) to accommodate an important public project, which involves MFDA acquiring the railroad right-of-way and constructing a large drainage ditch facility at approximately milepost 11. The drainage ditch facility is critically important to address flooding issues facing the immediate region. The Line previously served one shipper who is currently in

ENVIRONMENTAL REPORT

(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.

RRVW proposes to abandon an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND) in Cass County, North Dakota. There is one structure (a bridge) on the Line at milepost 11.0.

No customers have been served on the Line for nearly two years. The Line’s sole customer, CHS Dakota Plains Ag, (1) last received service on March 25, 2020; (2) is in the process of relocating its operations to accommodate the MFDA flood control project; and (3) no longer needs freight rail service. By the time RRVW files for abandonment authority on April 18, 2022, the Line will have been out of service for over two years. As such, RRVW intends to avail itself of the two-year-out-of-service abandonment provision at 49 CFR Part 1152, Subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights).

Following abandonment, the Line’s rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is, and existing drainage systems will remain intact. When the rail and track material is removed, the contractor will retain the existing level roadbed surface . No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, RRVW believes that no stormwater mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required. All salvaged steel components will either be reused or sold as

the process of relocating and who last received rail service in March 2020. As such, no rail shippers will be adversely impacted by the proposed abandonment.

scrap. Crossties may be reused in other railroad operations, or they will be recycled in accordance with applicable federal and state laws and regulations.

The alternative to abandonment is to not abandon the Line and retain the track in place. This alternative is not satisfactory. RRVW's sole shipper is relocating to accommodate the MFDA project and as such RRVW would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained. Maps depicting the Line are attached as **Appendix A**. An example of RRVW's letter to federal, state, and local government agencies along with a list of the consulting agencies that RRVW has contacted is attached as **Appendix B**. A letter of support from the sole shipper located on the Line is included as **Appendix C**. Comments received as a result of RRVW's written requests for feedback can be found in **Appendix D**. A structure list is attached as **Appendix E**. Topographical Maps and Color Photos are included in **Appendix F**. As noted in FN 1, the real estate comprising the Line's right-of-way is owned by BNSF Railway.³ BNSF fully supports the abandonment of the Line and plans to sell the Line's underlying real estate to MFDA to accommodate the flood control project. A letter of support from BNSF is attached as **Appendix G**. A letter of support from MFDA, outlining the Fargo-Moorhead Area Diversion Project, is attached as **Appendix H**.

(2) TRANSPORTATION SYSTEM

Describe the effects 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.

Effects of the proposed action on regional or local transportation systems and patterns

³ RRVW and BNSF originally entered a contract for deed of sale on July 13, 1987 (lease with the option to purchase the real estate underlying the Line) on July 23, 2027. See Railroad Acquisition; Red River Valley & W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD No. 31071 (S.T.B. served July 13, 1987); James Valley Grain, LLC v. BNSF Ry. Co., STB Docket No. 42139, Exhibit A (S.T.B. served March 10, 2014).

would be negligible. There is currently no rail freight or passenger traffic originating or terminating on the Line. Further, as stated previously, the Line's sole shipper is currently in the process of relocating its operations to accommodate the MFDA flood control project.

(3) LAND USE

- (i) Based on consultation with local and/or regional planning agencies and/or a 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.**

RRVW believes that the proposed abandonment is consistent with, and would promote, existing land use plans. The land adjoining the Line consists of a combination of residential and commercial areas. By letters dated March 22, 2022, copies of this Report have been mailed to the appropriate local and state contacts, including to representatives of Cass County, ND, and the City of Horace, ND for their information and comment. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

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

RRVW does not believe that there is any prime agricultural land that would be adversely affected by the proposed abandonment. As indicated above, the Line traverses primarily residential and commercial areas. As such, the proposed abandonment should not in any way contribute to prime farmland loss. Nevertheless, RRVW has notified the United States Department of Agriculture's Natural Resources Conservation Service of the proposed abandonment by letter dated March 22, 2022 (to which letter this E&HR was appended) and has requested assistance in identifying any potential effects on prime agricultural land. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

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

The Line is not located within a coastal zone. However, a copy of the E&HR was mailed to the North Dakota Department of Environmental Quality ("NDEQ") for its information and

comment. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.**

This abandonment has been undertaken solely to accommodate an MFDA public use project (flood control) at milepost 11. As such, RRVW is unwilling to negotiate alternative public use(s) for the corridor, such as railbanking. As noted previously, the real estate comprising the Line's right-of-way is owned by BNSF Railway. It is RRVW's understanding that upon RRVW being granted abandonment authority, BNSF plans to sell the Line's underlying real estate to MFDA to accommodate the flood control project. Based on RRVW's knowledge and belief, the Line does not contain any federally granted right-of-way.

(4) ENERGY

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

Development and transportation of energy resources will not be affected by the abandonment. No rail freight or passenger traffic is originating or terminating on the Line.

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

Movement or recovery of recyclable commodities will not be affected by the abandonment. No rail freight or passenger traffic is originating or terminating on the Line and the Line's sole shipper is in the process of relocating.

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

The proposed action will not result in any material impact on overall energy efficiency because no rail freight or passenger traffic is originating or terminating on the Line.

- (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 energy consumption and show the data and methodology used to arrive at the figure given.**

The diversion of traffic to motor carriers will not exceed the thresholds set forth at 49 CFR §1105.7(e)(4) as no diversions will occur. Accordingly, there is no need to produce data on diverted traffic or to quantify the net change in energy consumption.

(5) AIR

- (i) **If the proposed action will result in either:**
- (A) **An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or**
 - (B) **An increase in rail yard activity of at least 100 percent (measured by carload activity), or**
 - (C) **An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply.**

The above thresholds will not be exceeded.

- (ii) **If the proposed action affects a class I or non-attainment area under the Clean Air Act, and will result in either:**
- (A) **An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,**
 - (B) **An increase in rail yard activity of at least 20 percent (measured by carload activity), or**
 - (C) **An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, the state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction 49 U.S.C. 10901(or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line,**

only the three train a day threshold in this item shall apply.

RRVW is ***not*** a designated non-attainment area and the above-stated thresholds are therefore inapplicable. Nevertheless, the above thresholds will not be exceeded.

- (iii) If transportation of ozone-depleting materials (such as nitrogen oxide and freon) 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.**

Not applicable.

(6) NOISE

If any of the thresholds identified in item (5)(i) 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; or**
- (ii) an increase to a noise level of 65 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 these receptors if the thresholds are surpassed.**

None of the thresholds in item 5(i) of this section will be exceeded.

(7) SAFETY

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

The proposed abandonment of an out-of-service rail line should have no material adverse impact on public health and safety. If the abandonment is granted and the Line is salvaged, RRVW will close permanently cease operating over six public road crossings and one private crossing, thereby enhancing safety by eliminating distractions to vehicular traffic crossing the Line.

- (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 an accidental release of hazardous materials.**

Not applicable.

- (iii) If there are any known hazardous waste sites 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.**

RRVW has no knowledge of hazardous waste sites or sites where there have been known hazardous materials spills on the Line's right-of-way or adjacent land.

(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.**

RRVW does not believe that the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat. RRVW has notified the U.S. Fish and Wildlife Service ("USF&W") and the North Dakota Game & Fish Department ("NDGFD") of the proposed abandonment by letters dated March 22, 2022, and has requested assistance in determining whether the proposed abandonment will adversely affect endangered or threatened species or areas designated as critical habitat. A copy of this report was attached to the letters sent to USF&W and NDGFD. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

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

Having consulted local maps, RRVW is unaware of any wildlife sanctuaries or refuges, National or State parks, or forests that would be adversely affected by the proposed abandonment. Nevertheless, RRVW has notified the National Park Service ("NPS") of the

proposed abandonment by letter dated March 22, 2022. NPS has been supplied with a copy of this Report. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

(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.**

RRVW does not intend to remove or alter the contour of the roadbed underlying the Line to be abandoned by way of excavation or other ground-disturbance activity. Accordingly, no soils will be disturbed as a result of the proposed abandonment, and no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. There are no plans to undertake in-stream work, or dredge and/or use any fill materials in connection with the proposed abandonment, so, for this reason, also, the proposed abandonment will not result in water quality impacts. RRVW currently provides no rail common carrier service over the Line and has not done so for nearly two years. Consultation was requested from NDEQ and the United States Environmental Protection Agency (“USEPA”) by letters dated March 22, 2022. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**. NDEQ responded on March 30, 2022. A copy of NDEQ’s response and RRVW’s April 15, 2022 follow up response to NDEQ is included in Appendix D.

- (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 flood plains will be affected. Describe the effects.**

RRVW believes that – (1) no permits under section 404 of the Clean Water Act will be required for the proposed abandonment, and (2) no designated wetlands or 100-year flood plains will be affected. Upon receiving abandonment authority, removal of track material will be accomplished by use of the right-of-way for access, along with access via existing public and private crossings as necessary. No new access roads are contemplated. RRVW does not intend to disturb any of the underlying roadbed or to perform any activities that would cause

sedimentation or erosion of the soil and does not anticipate any dredging or use of fill in the removal of the track material. The crossties and/or other debris, if removed, will be transported away from the Line, and will not be discarded along the rights-of-way; they will not be placed or left in streams or wetlands, or along the banks of such waterways. Also, during track removal, appropriate measures will be implemented to prevent or control spills from fuels, lubricants, or any other pollutant materials from entering any waterways. For these reasons, RRVW believes that a permit under Section 404 of the Clean Water Act will not be required.

The abandonment, which has been requested by the MFDA, is being sought to allow MFDA to move forward with a project developed by the U.S. Army Corps of Engineers and the Diversion Board Authority⁴, which is necessary for flood control purposes. Note, for purposes of the railroad abandonment itself, the geometry of the roadbed will not be altered, and no in-stream work is contemplated. No discernible effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. Moreover, consultation was requested from the U.S. Army Corps of Engineers – St. Paul District by letter dated March 22, 2022. A copy of this Report was attached to the letter. See E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RRVW believes that no permit under section 402 of the Clean Water Act would be required for the abandonment. (See discussion in section 9(ii), above.) Nevertheless, RRVW has contacted the NDEQ and the USEPA regarding this item by letter dated March 22, 2022, and has requested guidance in identifying any potential water quality impacts (based on applicable water quality standards) and in determining whether the proposed abandonment is consistent with such federal, state, or local standards. A copy of this report was attached to the letter. See

⁴ Metro Flood Diversion Authority. <https://fmdiversion.gov/about-the-project/>. Accessed March 9, 2022.

E&HR Consultation Letter Example and Service List, attached as **Appendix B**.

(10) PROPOSED MITIGATION

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

RRVW does not expect any adverse environmental impact will result from the proposed abandonment and, therefore, is of the opinion that mitigating action is unnecessary. RRVW will, of course, cooperate in any further evaluation of proposed remedial/mitigation actions that interested federal, state, and/or local agencies may recommend to the Board.

(11) ADDITIONAL INFORMATION FOR RAIL CONSTRUCTIONS

Not applicable.

HISTORIC REPORT

49 CFR 1105.8(d)

PROPOSED ACTION AND ALTERNATIVES

RRVW proposes to abandon an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND) in Cass County, North Dakota. There is one structure on the Line (a bridge). No customers have been served on the Line for nearly two years.

Following abandonment, the rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is and existing drainage systems will remain intact. When the rail and track material is removed, the contractor will retain the existing level roadbed surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, RRVW believes that no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be recycled in accordance with applicable federal and state laws and regulations.

The alternative to abandonment is to not abandon the Line and retain the track in place. This alternative is not satisfactory. RRVW would continue to incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained. A map depicting the Line is attached in **Appendix A**.

ADDITIONAL INFORMATION

49 CFR 1105.8(d):

- (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 railroad structures that are 50 years old or older and are part of the proposed action;**

U.S.G.S. topographic maps depicting the location of the proposed abandonment and the approximate location of structures that are 50 years old or older and that are located along the Line are attached as part of Appendix A. These maps are being supplied to the State Historical Society of North Dakota (“SHSND”) along with a digital version of railroad valuation maps in RRVW’s possession as part of a complete copy of this report. RRVW understands that there is one railroad structure on the Line (a bridge at milepost 11.0) that is believed to be 50 years old or older.

- (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;**

According to RRVW data and valuation maps, the 2.29 miles of right-of-way is primarily 100 feet (50 feet each side of centerline) in width at all locations except for the station grounds in the community of Horace. On the north/northwest side of the track, the station grounds in Horace are 50 feet wide except for a 100-foot portion at the easternmost end of the track, where it is 100 feet wide. On the south side of the track, the station grounds are 100 feet wide for a distance of approximately 1850 feet, narrowing slightly at the easternmost point to about 66 feet. The right-of-way is in Cass County, ND. Overall, the right-of-way width ranges from 100 feet to 200 feet along the main track centerline. Pursuant to Surface Transportation Board policy, the railroad's right-of-way will constitute the Area of Potential Effect (“APE”) for this undertaking. The Line runs adjacent to residential and commercial areas. The topography is generally flat.

(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;

RRVW does not anticipate removing or dismantling any of the structures along the Line (described below) that are 50 years old or older. RRVW has determined that there is one structure along the Line (a bridge at milepost 11.0) that may be 50 years old or older, and the location of each such structure is shown on the U.S.G.S. maps attached as part of Appendix A. RRVW photographed and documented this one structure and is supplying those photographs of the structures to SHSND for evaluation. RRVW has also supplied railroad valuation maps to SHSND, which may provide further documentation potentially relevant to historical analysis of the structures in question. (The photographs and valuation maps are attached to the copy of this report sent to SHSND as part of Appendix A.) Aside from the materials, RRVW does not have any additional information in its possession (such as engineering diagrams or other records) that it believes would be of usefulness in aiding in any historical structures analysis.

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

According to the limited information in RRVW's possession, the one structure (the bridge at milepost 11.0) along the Line is believed to have been built or substantially rebuilt at least 50 years ago. Many of these structures have been improved over time, although RRVW has not undertaken any major improvements to this bridge during the time that RRVW has owned the Line.

(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;

RRVW has no historical records of its own relating to the Line. Based on research, however, RRVW understands that the Line was originally constructed in 1881 by the Fargo & Southwestern Railroad. The Line was subsequently deed to the Northern Pacific Railway

Company in 1898. On March 2, 1970, the Great Northern Railway Company, Northern Pacific Railway, the Pacific Coast R.R. Company and the Chicago, Burlington Lines, Inc. merged to form what was known as the Burlington Northern Railroad, now the BNSF railway. Authority for the merger was granted in Great N. Pac. & Burlington Lines, Inc., -- Merger, Etc. --- Great N. Ry. Co., Et Al. 331 I.C.C. 228, FD 21478 (served Nov. 30, 1967). The Line was included in the purchase of a portion of the Burlington Northern Railroad by the Red River Valley & Western Railroad Company in 1987. See R.R. Acquisition; Red River Valley & W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., Finance Docket No. 31071 (served July 13, 1987). The Line proposed for abandonment is a portion of the Horace (M.P. 8.5) to Edgeley (M.P. 108.44) line, which RRVW acquired the common carrier obligation for in the 1987 acquisition. RRVW intends, upon the effectiveness of the exemption, to terminate its rail common carrier obligation over, and to abandon, the Line. Because RRVW leases the real estate underlying the Line, it does not intend to dismantle or remove any structures over 50 years along the Line. BNSF as the owner of the real estate underlying Line plans to transfer ownership of the real estate, including the sole bridge to MFDA to accommodate the flood control project.

(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 found to be historic;

As indicated above, the Line appears to have been built in the 1880s, but RRVW is one of many subsequent owners of these rail assets. RRVW was not supplied with and does not have, engineering drawings of the structures discussed above. In fact, the only relevant documents in RRVW's possession have been included as part of Appendix A.

- (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 CFR 60.4), and whether there is a likelihood of archeological 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);**

As indicated above, RRVW's records indicate that there is one structure on or adjacent to the Line (a bridge) that is believed to be 50 years old or older. In RRVW's opinion, these structures would not meet the criteria for listing on the National Register of Historic Places. As the photographs supplied to SHSND would suggest, none of the subject structures appears to have unique or otherwise significant design characteristics. Moreover, none of these structures is linked to events or historic significance. RRVW understands that many, if not all, of the structures in question, could remain in use if the Line's right-of-way was to be converted into recreational trail. RRVW is unaware of any archeological resources or any other previously unknown historic properties on the Line's right-of-way.

- (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 archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.**

RRVW has no records of, and is unaware of, any known subsurface ground disturbance or fill, or environmental conditions that might affect the recovery of archeological resources. Undoubtedly, track work and/or construction has occurred regularly over the many years that the Line has been in operation. Such work may have affected the potential for recovery of archeological resources.

- (9) **Follow-Up Information – Additional information will be provided as appropriate.**

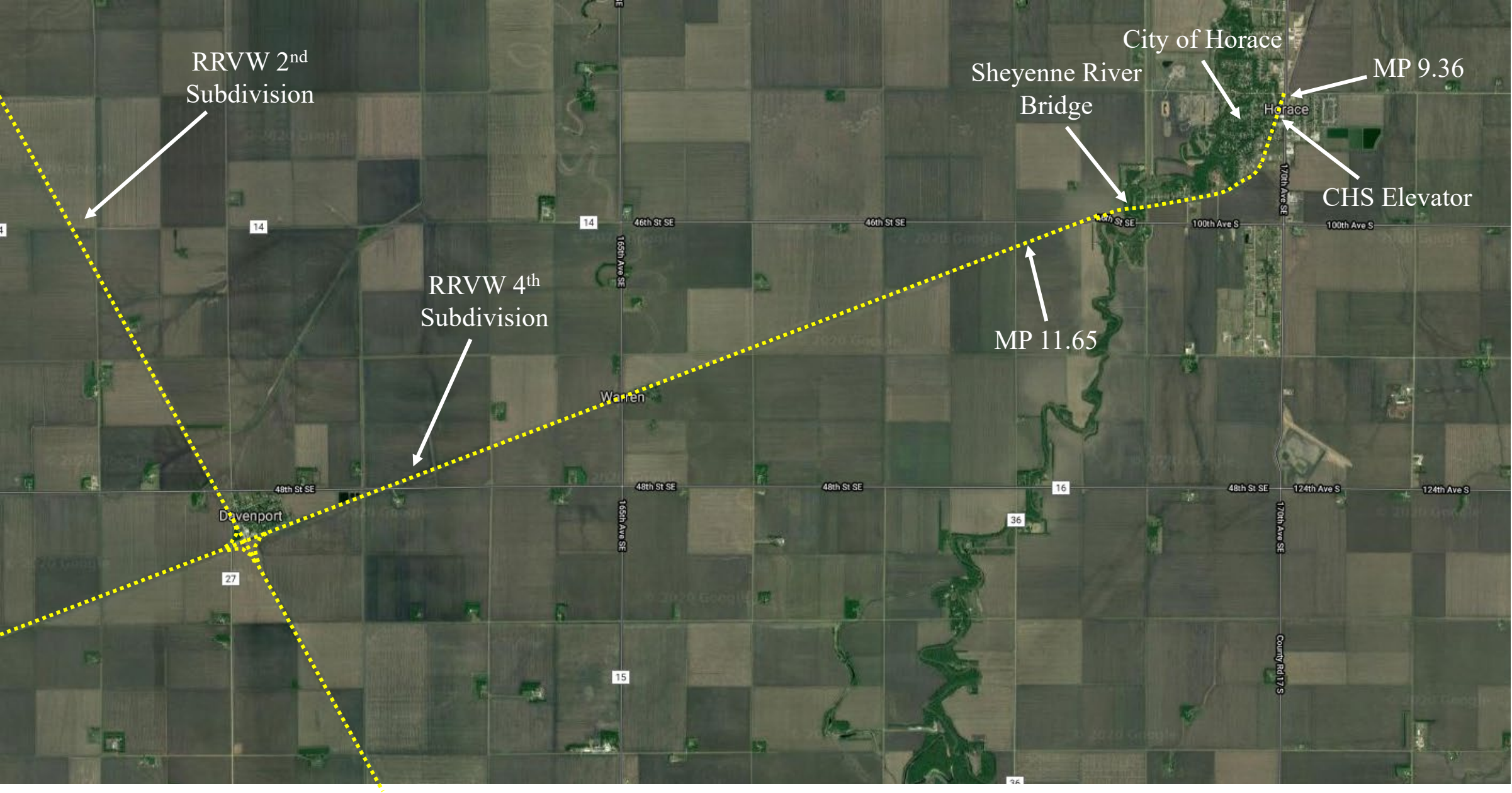
**BEFORE THE
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AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX A – MAPS



**BEFORE THE
SURFACE TRANSPORTATION BOARD
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**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX B - E&HR CONSULTATION LETTER EXAMPLE AND SERVICE LIST

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March 22, 2022

[Insert Consulting Party]

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In Cass County, ND, AB-391 (Sub-No. 11X)

Dear Sir or Madam:

On or about April 18, 2022, Red River Valley & Western Railroad Company (“RRVW”) expects to file with the Surface Transportation Board (“STB”) a Notice of Exemption pursuant to 49 CFR Part 1152, Subpart F (Exempt Abandonments, et al.), seeking authority for RRVW to abandon operations over an approximately 2.29-mile rail line (hereinafter, the “Line”) extending from milepost 9.36 to milepost 11.65 (at Horace, ND)⁵ in Cass County, North Dakota.⁶

⁵ RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of acquisition of 656 miles of rail line from BNSF in 1987. See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (S.T.B. served July 22, 1987). BNSF retained the real estate underlying the Line.

Around 2010, the RRVW siding serving the Line’s sole shipper, CHS Dakota Plains Ag, was shortened, and the mainline track was realigned to RRVW’s mainline track to reconnect with the shortened siding at a new switch location. This relocation was not subject to the Board’s jurisdiction because the relocation had no effect on (1) service to shippers; (2) the carrier’s territory or traffic; (3) competition; or (4) the carrier’s revenue or operating expenses.” See BNSF Ry. Co. - Petition for Declaratory Order; BNSF Ry. Co. -Abandonment Exemption-in Oklahoma Cnty., OK, FD 35164, STB Docket No. AB-6 (Sub-No, 430X) (S.T.B. served May 20, 2009) (confirming such relocation projects are outside the Board’s jurisdiction). As a result of the 2010 relocation, RRVW’s Line’s starting milepost became 9.36 and the portion of RRVW’s line between milepost 8.5 and 9.36 was permanently removed from the Board’s jurisdiction. Upon the Board exempting this abandonment and RRVW consummating the abandonment authority granted, the new starting point of the Line will become milepost 11.65 (near Horace ND).

⁶ RRVW is filing for abandonment authority at the request of the Fargo Moorhead Diversion Authority (“MFDA”) to accommodate an important public project, which involves MFDA acquiring the railroad right-of-way and constructing a large drainage ditch facility at

The Line traverses United States Postal Zip Codes territory 58047. In accordance with the procedures set forth in 49 CFR 1105.7 and 1105.8, RRVW is required to submit the following consolidated Environmental and Historic Report (“E&HR”).

Attached is a consolidated Environmental and Historic Report (the “E&HR” or “Report”), which includes a map of the affected area, and describes the proposed action and any expected environmental and historic effects. If you wish to address any of the information contained in the attached E&HR or if you have any questions about the Board’s environmental review process, please contact the Board’s Office of Environmental Analysis, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001; TEL: (202) 245-0295, and refer to AB-391 (Sub-No. 11X). You may also contact the undersigned counsel for RRVW.

Questions regarding the abandonment process generally, offers of financial assistance, and/or public use or trail use may be directed to the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Based on information in our possession, the Line does not contain federally granted rights-of-way. However, any documentation in RRVW’s possession will be made available promptly to those requesting it.

If there are any questions concerning this notice of intent, please contact me, RRVW’s representative, by mail: Crystal Zorbaugh, Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037; by FAX: (202) 663-7849; by e-mail: czorbaugh@bakerandmiller.com; or by telephone: (202) 663-7831. If I am not available, you may also contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

Crystal M. Zorbaugh
Counsel for Red River Valley & Western Railroad
Company

Enclosure

approximately milepost 11. The drainage ditch facility is critically important to address flooding issues facing the immediate region. The Line previously served one shipper who is currently in the process of relocating and who last received rail service in March 2020. As such, no rail shippers will be adversely impacted by the proposed abandonment.

RECIPIENT LIST - AB-391 (Sub No. 11X)

STATE HISTORICAL SOCIETY

State Historical Society of North Dakota
612 East Boulevard Ave.
Bismarck, North Dakota 58505

STATE DOT

Jim Styron
Rail Planner
North Dakota Dept. of Transportation
608 E. Boulevard Avenue, Room 323
Bismarck, North Dakota 58505-0700

US ENVIRONMENTAL PROTECTION AGENCY

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

REGIONAL/STATE EPA

Kathleen Beck
Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

David Glatt, Director
North Dakota Department of Environmental
Quality
4201 Normandy Street
Bismarck, ND 58503-1324

CITY/TOWNSHIP

Kory Peterson, Mayor
City Hall
P.O. Box 99
Horace, ND 58047

COUNTIES

Mary Scherling
Commissioner, District 5
Cass County Courthouse
211 9th Street South
Fargo, ND 58103

US ARMY CORPS OF ENGINEERS

U.S. Army Corps of Engineers,
St. Paul District
180 5th Street East, Suite 700
St. Paul, MN 55101-1678

STATE COASTAL ZONE MANAGEMENT

North Dakota Department of Environmental
Quality
Attn: Water Quality
4201 Normandy Street
Bismarck, ND 58503-1324

U.S. FISH AND WILDLIFE SERVICE

Matt Hogan, Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
Region 6 (CO, KS, NE, ND, SD, UT, &
WY)
Lake Plaza North
134 Union Boulevard
Lakewood, CO 80225

U.S. Fish & Wildlife Service
North Dakota Field Office
3425 Miriam Ave
Bismarck, ND 58501

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance
Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Bert Frost, Regional Director
Interior Region 5, Missouri Basin
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch,
NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES
CONSERVATION SERVICE

Mary E. Podoll
State Conservationist
220 East Rosser Avenue
PO Box 1459
Bismark, ND 58502-1458

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX C – CHS DAKOTA PLAINS AG SUPPORT LETTER



Dakota Plains Ag
P. O. Box 265 Kindred, ND 58051

701.428.3134
701.428.3137 fax

March 15, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In
Cass County, ND, AB-391 (Sub-No. 11X)

Dear Victor:

CHS Dakota Plains Ag (“CHS”) is in the process of relocating our operations from our Horace, North Dakota facility to our Kindred, North Dakota facility. Accordingly, we are writing to confirm that CHS will no longer need rail service at our location at 301 Main Street, Horace, North Dakota; and, as a result, CHS, fully supports Red River Valley & Western Railroad Co.’s (“RRVW”) plans to abandon operations over 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota¹ to accommodate the Fargo Moorhead Diversion Authority flood control project (“FMDA Project”). For the past decade, CHS has been the sole shipper served by RRVW over the segment proposed for abandonment.

We are grateful for RRVW’s coordination with CHS related to its proposed abandonment and relocation, which is also being driven by the FMDA Project. We look forward to continuing to be your customer at other North Dakota locations.

Thank you,

Dennis J Novacek
Dakota Plains Ag
General Manager

¹ CHS has been a customer of RRVW, since 1987. Around 2010, the RRVW siding that served CHS was shortened and realigned to RRVW’s mainline track to reconnect the shortened siding to a new switch location as part of a relocation project to remove grade crossings in connection with Cass County, ND efforts to improve safety.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX D – FEEDBACK RECEIVED

FORTHCOMING

From: "Crockford, Konrad S." <kcrockford@nd.gov>
To: "czorbaugh@bakerandmiller.com" <czorbaugh@bakerandmiller.com>
Date: 04/05/2022 09:57 AM
Subject: RRVW - Abandonment Exemption - In the City of Horace in Cass County, ND

Good Moring Ms. Zorbaugh,

I oversee railroad regulation and safety for the Public Service Commission (Commission) and I am responding to your letter date March 29, 2022 addressed to Commissioner Julie Fedorchak regarding RRVW - Abandonment Exemption - In the City of Horace in Cass County, ND.

I noted the maps that were referenced are extremely small and unusable in discerning the location and any of the other features mentioned within the Environmental and Historic Report (E&HR). Would it be possible to receive full size copies or digital images of the maps referenced in Appendix A and Appendix F of the E&HR?

Thank you,

Konrad Crockford
Director, Compliance Division

*Weights & Measures • Railroad Safety • Pipeline Safety
Auction Licensing • Risk Management • Damage Prevention*

701.328.4097 • kcrockford@nd.gov • www.psc.nd.gov



To: "Crockford, Konrad S." <kcrockford@nd.gov>
From: Spencer N Naake/bakermiller
Date: 04/18/2022 12:19PM
Cc: Crystal Zorbaugh/bakermiller@bakermiller
Subject: RE: RRVW - Abandonment Exemption - In the City of Horace in Cass County, ND

Konrad,

The E&HR contained PDFs of the map provided by RRVW and topographic maps generated by us.

Based on the map provided by RRVW, I have recreated both maps on Google Earth as we were unable to get a closer view on the maps in the E&HR.

Please find these attached.

Best,

Spencer



Spencer Naake | Baker & Miller PLLC
Staff Attorney

2401 Pennsylvania Ave. NW, Suite 300

Washington, DC 20037

(202) 663-7829 (Direct)

(202) 441-1739 (Mobile)

www.bakerandmiller.com

*Admitted to practice in DC and MD

From: "Anderson, Carl J." <cjanders@nd.gov>
To: "czorbaugh@bakerandmiller.com" <czorbaugh@bakerandmiller.com>
Date: 03/30/2022 04:47 PM
Subject: Horace rail line abandonment

Crystal,

The North Dakota Department of Environmental Quality (NDDEQ) has reviewed the March 22, 2022, *Environmental and Historic Report* for the abandonment of approximately 2.29 miles of rail line near Horace, North Dakota. Section (7)(iii) of the document indicates that RRVW has no knowledge of hazardous spills in the railroad right-of-way or on adjacent land.

Our spill and release records indicate that between 8,000 and 16,000 gallons of liquid nitrogen fertilizer were spilled at the former Farmer's Elevator (currently CHS Dakota Plains Ag, located at milepost 9.36) in March of 1976. Our records do not indicate the extent of the spill or if it was subsequently cleaned up. Therefore, it is unknown if surface and subsurface soils in the rail line right-of-way have been impacted. In the future, if nitrogen-impacted soils are identified in the rail line right-of-way they will require proper characterization and disposal.

Feel free to contact me by phone (701-328-5213) or email (cjanders@nd.gov) if you have any questions or require additional information.

Carl Anderson

*Groundwater Protection Program Manager
Division of Water Quality*

701-328-5213 • cjanders@nd.gov • <https://deq.nd.gov/>

We have moved!

Effective September 1 our new building and mailing address is:

4201 Normandy Street
Bismarck, ND 58503-1324



From: Crystal Zorbaugh/bakermiller
To: "Anderson, Carl J." <cjanders@nd.gov>
Cc: Spencer N Naake/bakermiller@bakermiller
Date: 04/15/2022 02:18 PM
Subject: Re: Horace rail line abandonment

Hello Carl,

Sorry for my delayed response to your March 30, 2022 email, but I am in the middle of a trial. I am writing to confirm receipt of and thank you for your response, which will be included in our updated Environmental and Historic Report, as an attachment to our Notice of Exemption, which we plan to file on April 20, 2022.

The March 1976 spill occurred over 11 years prior to RRVW's acquisition of the railroad tracks in 1987. See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (S.T.B. served July 22, 1987). In 1987, RRVW was made aware of a lease, related to milepost 9.36, between the lessor, BNSF Railway, and the lessee, Farmers Elevator Company of Horace, effective May 1, 1974 and has in its possession that lease and the subsequent leases with Harvest States Cooperatives (predecessor to CHS), effective May 19, 1997 and CHS Dakota Plains Ag (CHS), effective September 15, 2011.

However, RRVW does not have any records within its possession concerning the March 1976 spill. Accordingly, RRVW and its current employees had no knowledge of the spill, and therefore no basis to report the spill in Section 7 (iii) of the E&HR. The only records concerning potential contamination at milepost 9.36 in RRVW's possession are a "Site Assessment Summary Report" related to the September 15, 2011 lease between BNSF and CHS and a "No Further Investigative or Remedial Action" letter from the North Dakota Department of Health, dated May 11, 2011. Neither of these records indicate concerns about residual effects from the March 1976 spill that you reported.

Because RRVW does not own the underlying real estate, RRVW has no information concerning the parcel aside from the aforementioned documents. That said, RRVW appreciates the NDDEQ's feedback and it will be included in the environmental and historic report for the Board's consideration.

FYI - please find attached copies of the previously discussed September 15, 2011 and May 11, 2011 letters.

If you need further information, please contact Spencer, who is cc'd above.

Happy Easter!

Best,

Crystal

(See attached file: 5.11.11 ND Department of Health Response.pdf)(See attached file: DOC040422 (1).pdf)

Crystal M. Zorbaugh
Associate Attorney
Baker and Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7831 (Direct)
(202) 663-7849 (Fax)

The above message may be privileged, confidential and protected from disclosure by attorney/client, work product or other privileges. If you believe that it

4/20/22, 1:59 PM

Fw: Horace rail line abandonment

has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.



NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



May 11, 2011

Mr. Jerry Eide
Cenex Harvest States
763 Willoughby Lane
Stevensville, MT 59870

Re: Contamination File Closure, Former CHS Fertilizer Plant, Horace, ND

Dear Mr. Eide:

I received your letter, e-mailed on April 13, 2011, informing me that the fertilizer contaminated areas around the former CHS fertilizer distribution plant has been paved over to cap the site and thus prevent precipitation infiltration and potential contaminant migration. This action was taken instead of contaminant removal due to proximity of buried electrical cabling, water lines and a city water storage tower, as previously discussed and approved by this agency.

Therefore, no further investigative or remedial action is required at this time. However, if negative off-site impacts related to the fertilizer contamination left in place are reported in the future, we may re-open the investigation. This letter does not, however, convey a liability release under Section 23-20.3-03.1 of the North Dakota Century Code. You may request a release Section 23-20.3-03.1 at some time in the future if you have fulfilled all the requirements of that section. If you have any questions, please contact me at 701.328.5236.

Sincerely,

Kris D. Roberts
Environmental Geologist
Division of Water Quality

KDR:dip

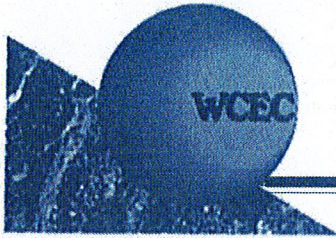
Environmental Health
Section Chief's Office
701.328.5150

Division of
Air Quality
701.328.5188

Division of
Municipal Facilities
701.328.5211

Division of
Waste Management
701.328.5166

Division of
Water Quality
701.328.5210



West Central Environmental Consultants

14 Green River Road • P.O. Box 594 • Morris, MN 56267-0594
(320) 589-2039 or 1-800-422-8356 • Fax (320) 589-2814

October 16, 2008

Mr. Jerry Eide
CHS Inc.
763 Willoughby Lane
Stevensville, MT 59870

Re: Site Assessment Summary Report
CHS Fertilizer Plant, Horace, ND
WCEC Project No.: 08-6775-40

Dear Mr. Eide:

On August 26, 2008, West Central Environmental Consultants, Inc. (WCEC) conducted a site assessment and walk-over at the former CHS fertilizer storage building located at 301 Main Street, Horace, ND. Consider this letter a Limited Phase II assessment to the aforementioned site which is being conducted on BNSF leased property for the intensions of a lease transfer.

Site Objectives:

- Conduct site assessment and walk-over activities
- Collect surface soil samples to determine the presence of fertilizer impacts on BNSF leased property
- Submit a Phase II environmental assessment upon receipt of analytical results for submission to BNSF for the transfer of the site lease to the local fire department

Site Location:

The fertilizer storage building is located at 301 Main Street in Horace, ND (Figure 1). The GPS coordinates are 46° 54' 30.83''N and 96° 54' 16.82'' W using Google Earth computer technology.

Scope of Work:

WCEC collected three composite soil samples from the north end of the fertilizer storage building (Figure 2 and photograph 1). The composite soil samples consisted of three sub-samples collected within a 15 foot diameter area (see attached soil collection procedures). The north end of the fertilizer building was selected for sampling because it contained both the fertilizer load-in and load-out pads along with the buildings only large equipment door. These composite samples were collected from the 0.5 – 1.0 foot depth below surface grade and sent to Agvise Laboratories in Northwood, ND for analysis of nitrates, ammonia, and TKN. The CHS, Horace facility never stored or handled pesticides/herbicides or conducted fertilizer impregnation, therefore sample analysis was limited to nitrate, ammonia, and TKN.

Site Observations:

The fertilizer building is located on commercial property within the city limits of Horace, ND. Approximately 1/3 of the building is on BNSF leased property and 2/3 of the building is located on CHS, Horace property (see attached lease map). Land immediately surrounding the site includes rail road tracks to the west, and a gravel drive/parking lot to the north, east and south. The Horace city water tower is also located approximately 30 feet to the east. Beyond the gravel lot to the south are four grain storage bins and to the north, a large grain elevator. During the site assessment/work-over WCEC noted the fertilizer building to be in good condition (photograph 2). Inside the building some fertilizer remains in the storage bins, along with some equipment used during operations (photographs 3 and 4). WCEC did not observe any holes in the ceiling or walls, however some cracks in the concrete were observed. The general construction of the building is a wood framed building with steel outer walls and an asphalt shingled roof.

Discussion:

Laboratory analysis of S1 and S2 for nitrates, ammonia, and TKN identified moderate levels nitrate and ammonia fertilizer contamination. Laboratory analysis of S3 for nitrates, ammonia, and TKN identified low levels nitrate and ammonia fertilizer contamination.

Soil sample S1, taken near the fertilizer load-in cement pad, contained nitrates at 87 ppm, ammonia at 970 ppm, and TKN at 4710 ppm. Soil sample S2, taken near the large main entry door, contained nitrates at 253 ppm, ammonia at 1738 ppm, and TKN 6340 ppm. Soil sample S3, taken near the load-out elevator, contained nitrates at 232 ppm, ammonia at 112 ppm, and TKN 2600 ppm.

Fertilizer soil site cleanup goals in the state of North Dakota are considered on a case-by-case basis. Typically, the cleanup goal for nitrates (nitrates + ammonia) is 500 ppm. Currently the state of North Dakota has no established clean-up goal for TKN. Soil sample locations S1 and S2 are above the North Dakota Department of Health's clean-up goal of 500 ppm for nitrates. Soil sample S3 is below the North Dakota Department of Health's clean-up goal of 500 ppm for nitrates.

Conclusions:

WCEC conclusions are based upon a review of all CHS, Horace site data. Laboratory analysis of soil samples collected from sample locations S1 and S2 contained nitrates above the typically established clean-up goal. The horizontal and vertical extent of fertilizer contamination remains undetermined for sample locations S1 and S2. As noted during site walk-over activities, the building contains some fertilizer and equipment. Removal of the fertilizer and equipment should be completed at the CHS, Horace facility.

If you have any questions regarding this project please contact me or Gary Perowitz at 800-422-8356.

Sincerely,



Brett Edlund
Assistant Project Manager/Chemist
Enclosure(s)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX E – STRUCTURE LIST

STRUCTURE LIST - AB-391 (Sub No. 11X)

Structure	Bridge
Location	Horace, North Dakota
Milepost	11.0
Year Built	1965
Feature Crossed	Sheyenne River

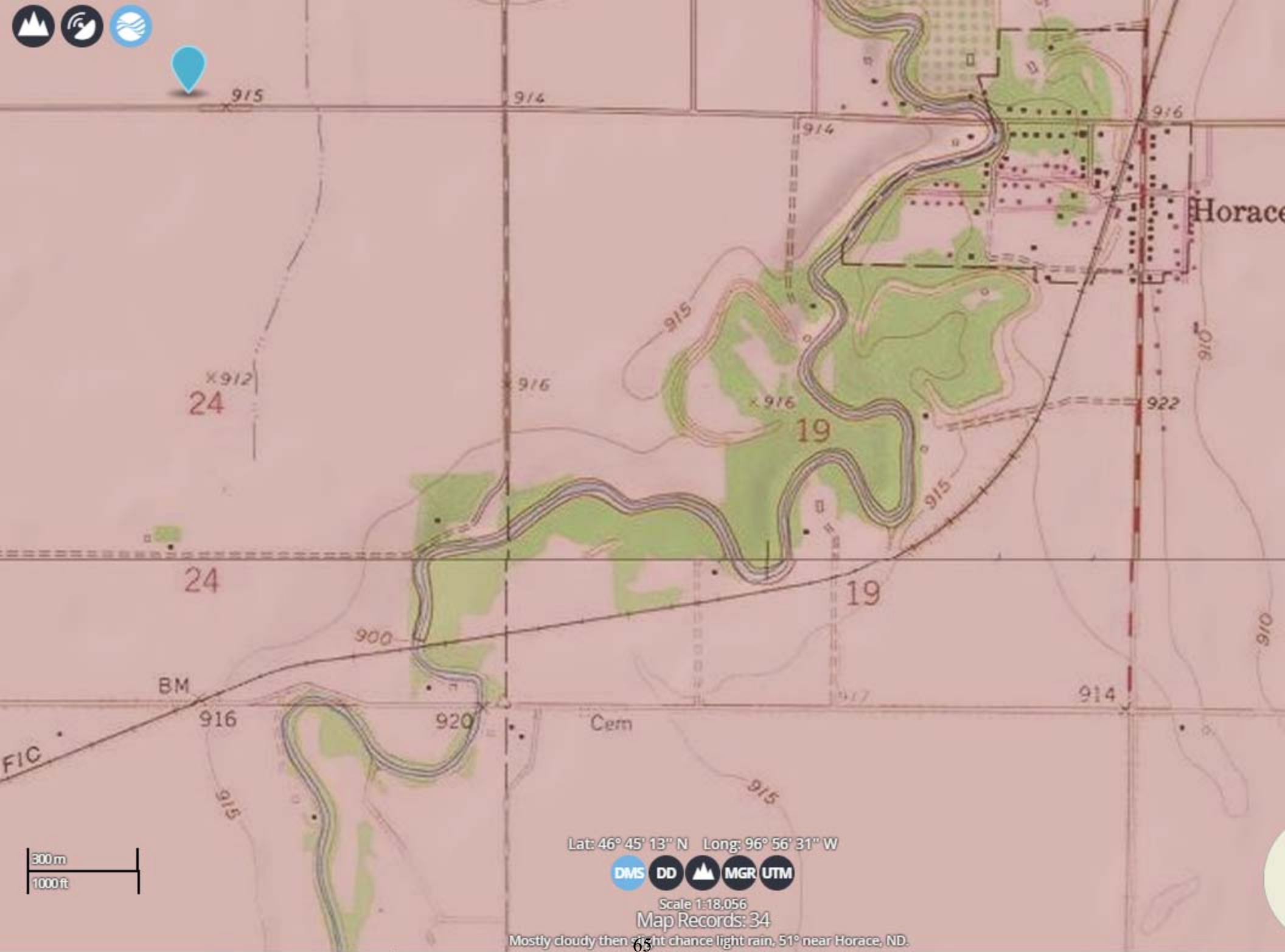
**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX F – TOPOGRAPHICAL MAPS AND COLOR PHOTOS



Red River Valley & Western Railroad



Bridge 11.0 Deck View



Bridge 11.0 Dump Bent



Bridge 11.0 Bent 4 Pile 1



Bridge 11.0 Bent 6 Pile 1

Red River Valley & Western Railroad



Bridge 11.0 Drift



Bridge 11.0 Typical Bent



Bridge 11.0 Typical Span

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX G – BNSF SUPPORT STATEMENT



Merril Lieb
AVP Shortline Development

BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161
2500 Lou Menk Drive, AOB-1
Fort Worth, TX 76131-2828
(817) 867-2270
(817) 352-7154 fax
Merril.Lieb@BNSF.com

March 23, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption –
In Cass County, ND, AB-391 (Sub-No. 11X)

Dear Victor:

BNSF Railway (“BNSF”) is writing to support Red River Valley & Western Railroad Co.’s (“RRVW”) abandonment of approximately 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota (hereinafter, the “Line”). BNSF retained the real estate underlying the Line when it sold the Line to RRVW as part of RRVW’s 1987 acquisition.¹ BNSF fully supports RRVW’s abandonment of the Line. Upon consummation of RRVW’s abandonment authority and as part of a related transaction, BNSF will convey the real estate underlying the Line to Fargo Moorhead Diversion Authority (“FMDA”) to accommodate the Fargo Moorhead Diversion Authority flood control project. If you need any further information, please do not hesitate to contact me by telephone at (817) 867- 2270 or by email merril.lieb@bnsf.com.

Thank you,

DocuSigned by:

EEEEBC56127EB418...

Merril Lieb,
AVP Shortline Development

¹ RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of the acquisition of 656 miles of rail line from BNSF in 1987. See Red River Valley and Western Railroad Co.; Acquisition and Operation Exemption; Certain Lines of Burlington Northern Railroad Co., FD 31071 (STB served July 22, 1987).

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11X)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

ENVIRONMENTAL AND HISTORIC REPORT

APPENDIX H – MFDA SUPPORT STATEMENT

March 18, 2022

Victor Meyers
President
Red River Valley & Western Railroad Co.
209 Dakota Ave.
Wahpeton, ND 58075

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In Cass County, ND, AB-391
(Sub-No. 11X)

Dear Victor,

The Fargo-Moorhead Area Diversion Project (the “Project”) was developed by the U.S. Army Corps of Engineers and the Metro Flood Diversion Authority (“MFDA”) to protect the Fargo-Moorhead-West Fargo metro area during times of extreme flooding. The Project, once completed, will protect more than 235,000 people from potentially catastrophic flooding through the implementation of various protective measures.¹

The Project began construction in early 2017 and is estimated to cost \$2.75 billion (2018\$) and has received funding from the federal government, the state of North Dakota, the state of Minnesota, and local sponsors.

As you are aware, the MFDA requested that Red River Valley & Western Railroad (“RRVW”) file for abandonment authority to accommodate this important Project, which specifically involves the MFDA acquiring the railroad right-of-way and constructing a stormwater diversion channel facility at approximately milepost 11. Accordingly, MFDA fully supports RRVW’s plans to abandon operations over 2.29 miles of RRVW rail line extending from milepost 9.36 to milepost 11.65 at Horace, North Dakota.

We request that the Surface Transportation Board (STB) expeditiously grant RRVW’s abandonment, which was undertaken at the request of MFDA. Acquisition of the abandoned railroad corridor from RRVW and BNSF (owner of the underlying real estate) is critically necessary to protect the Fargo-Moorhead-West Fargo metro area from potentially catastrophic flooding. Please let us know if you have any questions concerning this important public project. I can be reached by phone 701-781-4758 or by email PaulsenJ@fmdiversion.gov

Thank you,


Joel Paulsen, PE
Executive Director

¹ The Project includes river control structures with radial-arm flood gates controlling the levels of water flowing into the metro area through the Red and Wild Rice Rivers. Floodwalls and levees in Fargo and Moorhead will allow up to 37 feet of water to run through the town. The Project will also include a 20-mile southern embankment to keep floodwaters out of the metro area; a 30-mile stormwater diversion channel to allow for floodwaters to safely flow westerly and northerly around the metro area; and an upstream mitigation area used to temporarily store floodwaters to minimize downstream impacts.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-391 (Sub-No. 11x)

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
CASS COUNTY, NORTH DAKOTA**

EXEMPTION NOTICE

DRAFT NOTICE OF EXEMPTION

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 391 (Sub-No. 11x)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Cass County,
ND

Red River Valley & Western Railroad Company has filed on April 20, 2022, a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 2.29 miles of its railroad in Cass County, ND. The subject rail line extends from milepost 9.36 to milepost 11.65 (at Horace, ND) (the “Line”). The Line traverses United States Postal Service Zip Code territory 58047. There are no customers served on the Line, which has not been utilized to provide common carrier service to shippers for two years.

RRVW has certified that for the past two years: (1) no local or overhead traffic has moved over the Line; (2) overhead traffic, if there were any, could be rerouted over other lines; (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 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 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 Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 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 June 9, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),² and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by _____. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by _____, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to RRVW's representative: Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

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

RRVW has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by _____, 2022. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA, at (202) 245-0305. Assistance for the hearing impaired is available

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Serv. 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.

² Each OFA must be accompanied by the filing fee, which is currently set at \$2,000.00. See 49 C.F.R. § 1002.2(f)(25).

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 C.F.R. § 1152.29(e)(2), RRVW 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 RRVW's filing of a notice of consummation by _____, 2023, 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: _____.

By the Board, _____, Director, Office of Proceedings.