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BEFORE THE  
SURFACE TRANSPORTATION BOARD



THE BURLINGTON NORTHERN AND )  
SANTA FE RAILWAY COMPANY -- )  
ABANDONMENT EXEMPTION IN )  
BRAINERD, CROW WING COUNTY, )  
MINNESOTA )

DOCKET NO.  
AB-6 (Sub No 421X)

PETITION FOR EXEMPTION

**FEE RECEIVED**

JUN 14 2004

SURFACE  
TRANSPORTATION BOARD

THE BURLINGTON NORTHERN AND SANTA  
FE RAILWAY COMPANY  
2500 Lou Menk Drive  
Fort Worth, TX

**FILED**

JUN 14 2004

SURFACE  
TRANSPORTATION BOARD

Petitioner

Michael Smith  
Freeborn & Peters  
311 S. Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

Attorney for Petitioner

ENTERED  
Office of Proceedings

JUN 14 2004

Part of  
Public Record

DATE FILED: June 9, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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INTRODUCTION

Pursuant to 49 U.S.C. § 10502(a) and C.F.R. § 1121.1, et seq., THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) hereby petitions for an exemption from the requirements of 49 U.S.C. § 10903 for abandonment of its rail and discontinuance of rail service between Milepost 0.00 and Milepost 1.60 in and Brainerd, Minnesota, a distance of 1.60 miles.

SUBJECT RAIL LINE

BNSF proposes to the abandon 1.60 miles of rail line from milepost 0.00 and milepost 1.60 in and near Brainerd, Minnesota (the "Line"). The Line traverses United States Postal Service ZIP Code 56401. A map of the Line is attached as Exhibit 1.

Based on information in BNSF's possession, the Line does not contain federally granted right-of-way. The right of way was acquired by the Brainerd and Northern Minnesota Railway in 1896. Brainerd and Northern Minnesota Railway was a predecessor to BNSF.

### REASONS FOR THE ABANDONMENT

An exemption is sought for abandonment and discontinuance of rail service on the Line because (1) there is no longer any demand for service on the line; and (2) all active rail customers on the Line have feasible transportation alternatives and do not oppose the proposed abandonment.

(1) There Is No Longer Any Demand For Service On The Line

The line is no longer in operation since Ferrellgas, the only customer which has utilized the line in the past several years, relocated to another rail served location in Brainerd during 2003. The relocation of Ferrellgas and subsequent abandonment of the Brainerd, Minnesota trackage will allow the Minnesota Department of Transportation to remove an overpass on the west side of Brainerd that would otherwise need to be replaced at significant taxpayer expense. See Exhibit 2, Verified Statement of Richard A. Batie.

(2) Shippers Have Feasible Transportation Alternatives And Support the Proposed Abandonment

There would be little adverse effect on local interests from abandonment because the one shipper on the Line has feasible transportation alternatives, as shown in the Verified Statement of Richard A. Batie (Exhibit 2) and in Exhibit 3. Ferrellgas, the only shipper on the line, has indicated that they support the abandonment.

### THE EXEMPTION STANDARDS HAVE BEEN MET

Under 49 U.S.C. §10903, a rail line cannot be abandoned without the prior approval of the Board. However, under 49 U.S.C. § 10502, the Board must exempt a rail transaction from regulation when it finds that (1) application of the pertinent statutory provisions is not necessary

to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either the transaction is of limited scope of regulation is unnecessary to protect shippers from the abuse of market power. The abandonment proposed by BNSF here clearly falls within the statutory standards requiring exemption under 10502.

The national rail transportation policy as enumerated in 49 U.S.C. §10101 obviates the need for detailed scrutiny by the Board in 49 U.S.C. §10903 in this instance. The need for federal regulatory control of the rail transportation system is minimized in this context in the form of a simple exemption for abandonment of the subject line. See 49 U.S.C. §10101(2). Specifically, by minimizing the regulatory expense and delay inherent in a full abandonment application, exemption will expedite regulatory decisions and reduce regulatory barriers to exit. See 49 U.S.C. §§10101(2) and (7). Furthermore, BNSF will avert significant avoidable costs in the future if it is permitted to abandon the Line that is no longer needed for rail operations. An exemption by the STB in this instance will allow BNSF to compete more effectively, foster sound economic conditions, and encourage efficient management in accordance with the national rail transportation policy. See 49 U.S.C. §§10101(4), (5), and (9). See, e.g., STB Docket No. AB-43 (Sub-No. 172X), *Illinois Central Railroad Company-Abandonment Exemption-In Adams County, MS*, Served March 20, 2002; STB Docket No. AB-55 (Sub-No. 601X), *CSX Transportation Inc. – Abandonment Exemption – In Lenoir County, NC*, Served March 8, 2002; STB Docket No. AB-497 (Sub No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997); STB Docket No. AB-318 (Sub-No 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997.

This transaction will not result in an abuse of market power. Ferrellgas, the only shipper on the Brainerd line, has relocated to another rail-served location in Brainerd, and is currently receiving propane by rail at that location. See Exhibit 2, the Verified Statement of Richard A. Batic. In addition, Ferrellgas supports the abandonment. See Exhibit 3. Because Ferrellgas supports the proposed abandonment and has adequate transportation alternatives, application of 49 U.S.C. § 10903 to the proposed abandonment and discontinuance is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-850X, *St. Croix Valley Railroad Company—Abandonment and Discontinuance Of Service Exemption—In Pine and Kanabec Counties, MN*, Served July 7, 2003; STB Docket No. AB-468 (Sub-No. 5X), *Paducah & Louisville Railway, Inc.—Abandonment Exemption—In McCracken County, KY*, Served June 18, 2003; STB Docket No. AB-55 (Sub-No. 615X), *CSX Transportation, Inc.—Discontinuance Exemption—(Between East Of Memphis And Cordova) In Shelby County, TN*, Served July 17, 2002. Since no abuse of market power would result from this transaction, the Board need not determine whether the proposed transaction is of limited scope. The proposed abandonment of the 1.6 miles of trackage which is no longer needed by local shippers should also satisfy the “limited scope” criterion for exemption authority.

Because the evidence warrants the finding required by 49 U.S.C. § 10502(a), the board should grant the proposed exemption.

#### ENVIRONMENTAL AND HISTORICAL REPORTS

The Environmental Report required by 49 C.F.R. §1105.7 and the Historic Report required by 49 C.F.R. §1105.8 were previously served on the STB and the required parties and are attached here as Exhibit 4, respectively, to this Petition for Exemption. The certificate of Service evidencing BNSF’s compliance with 49 C.F.R. §1105.11 is attached to the

corresponding reports.

LABOR STANDARDS

The interest of railroad employees will be protected by the conditions imposed *in Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

DRAFT FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit 5.

WHEREFORE, BNSF respectfully requests that the Board issue a decision exempting the proposed abandonment from the provisions of 49 U.S.C. §10903 and direct that the exemption be effective on the date of the Board's decision.

Respectfully submitted,



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

Dated: June 9, 2004

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
NO. AB-6 (Sub No. 421X )

**CERTIFICATION**

I hereby certify that (1) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Minnesota Public Utilities Commission; Minnesota Department of Transportation; the Minnesota State Clearinghouse; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on May 20, 2004; (2) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on May 20, 2004; (3) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on May 20, 2004; and (4) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on June 8, 2004 in the Brainerd Dispatch, affidavit of publication is attached.



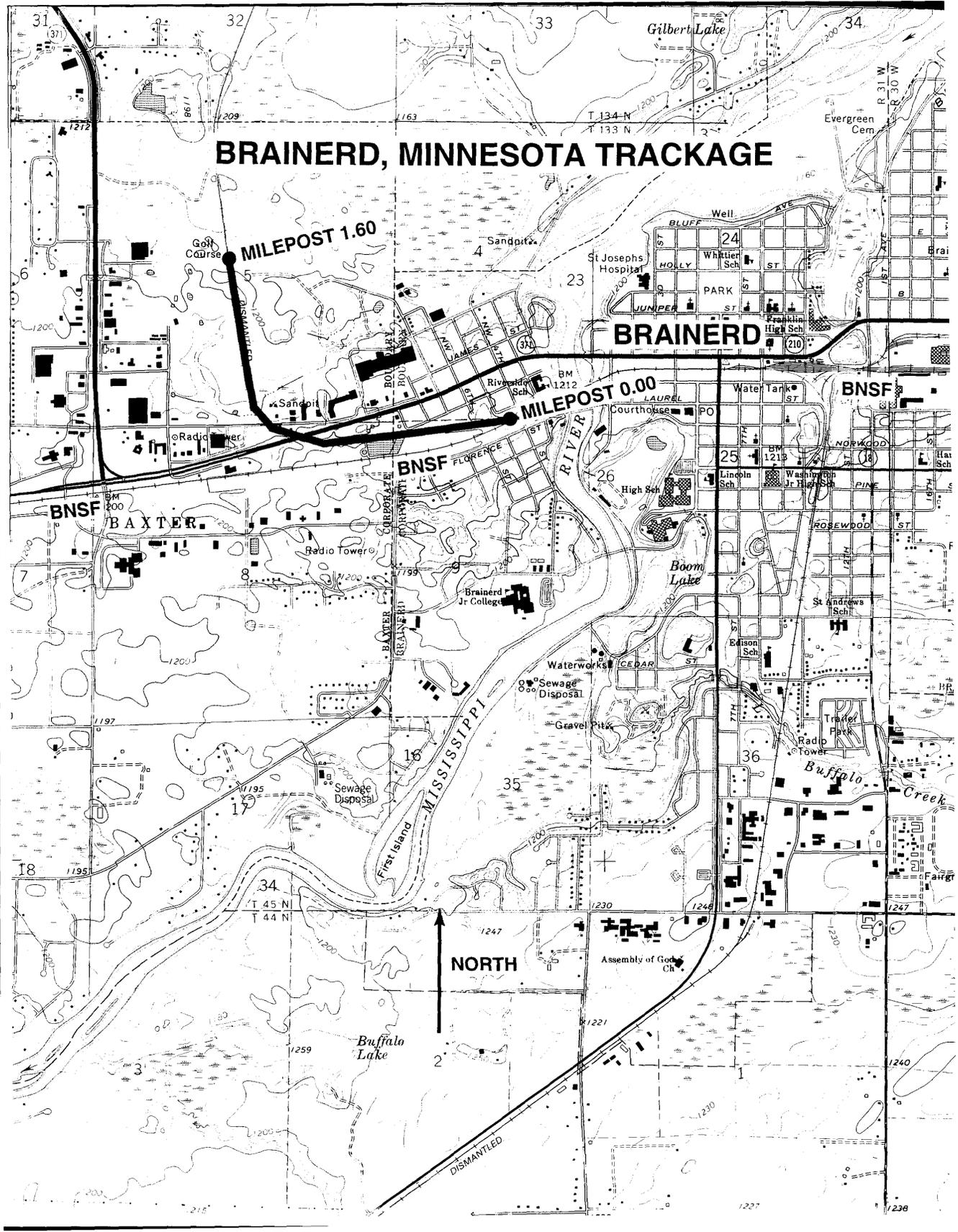
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Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: June 9, 2004

1

# BRAINERD, MINNESOTA TRackage



2

VERIFIED STATEMENT OF RICHARD A. BATIE

BNSF seeks to abandon 1.60 mile of trackage at Brainerd, Minnesota (Milepost 0.00 to Milepost 1.60). This abandonment is proposed to accommodate the Minnesota Department of Transportation's desire to save the replacement cost of a highway overpass on the west side of Brainerd.

According to BNSF's records maintained in the ordinary course of business, Ferrellgas is the only customer that has used the Brainerd, Minnesota Trackage in the past two years. Ferrellgas receives propane from Alberta, Saskatchewan and Montana and distributes it locally. Ferrellgas relocated from its former location on the Brainerd, Minnesota Trackage proposed for abandonment to a new rail served location in Brainerd during 2003. Ferrellgas has provided BNSF with a letter of support for the proposed abandonment (see Exhibit 3) and is now receiving rail shipments of propane at its new location in Brainerd.

During 2002, Ferrellgas received 58 cars of propane on the Brainerd Trackage proposed for abandonment. In 2003, Ferrellgas received 32 cars of propane at its former location, and one car of propane at its new location in Brainerd.

Bob Timmons, District Manager of Ferrellgas at Brainerd has informed BNSF that Ferrellgas received propane by rail at its former location in Brainerd through April 2003. Ferrellgas subsequently relocated to a different rail served location in Brainerd. In December of 2003 Ferrellgas received its first car of propane at the new location in Brainerd.

Ferrellgas, the only customer that has used the Brainerd, Minnesota Trackage in recent years, has relocated to another rail served location in Brainerd and has furnished BNSF a letter of support for the proposed abandonment. Ferrellgas is now receiving rail shipments of propane at its new location and will not be affected by the proposed abandonment. If the Surface

Transportation Board authorizes the proposed abandonment of the Brainerd, Minnesota Trackage, the State of Minnesota plans to avoid save the cost of replacing the state highway 210 overpass on the west side of Brainerd.

**BRAINERD, MINNESOTA TRACKAGE TRAFFIC  
2002 AND 2003**

<u>Customer</u>	<u>Commodity</u>	<u>2002 Cars</u>	<u>2003 Cars</u>
Ferrellgas	Propane	58	32

**Note: All cars listed are inbound. Ferrellgas received one additional car of propane in 2003 at its new location which is not on the Brainerd, Minnesota Trackage proposed for abandonment. The 2003 cars listed above were received in the first quarter of 2003.**

VERIFICATION

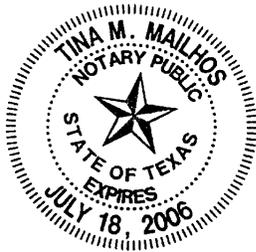
STATE OF TEXAS            )  
  )ss  
COUNTY OF TARRANT    )

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Petition of Exemption in AB-6 (Sub-No. 421X); that he affirms that he has carefully examined all of the statements in the Petition; that he has knowledge of the facts and matters relied upon in the Petition; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

*Richard A. Batie*

Richard A. Batie  
Manager, Shortline Development

Subscribed and sworn to before me the 10 day of June, 2004.



*Tina Malhos*  
Notary Public

3



**Ferrellgas**

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April 23, 2003

Mr. Rich Batie, Manager  
Shortline Development  
Burlington Northern Santa Fe Railway  
2600 Lou Menk Drive, 2<sup>nd</sup> Floor  
Fort Worth, TX 76131

**RE: BNSF Abandonment Between Milepost 0.00 and Milepost 1.60;  
Brainerd, MN**

Dear Mr Batie:

This concerns the referenced abandonment of BNSF right of way. I represent Ferrellgas, LP, a shipper located on the line subject to the proposed abandonment.

This letter is to notify you that BNSF has provided advance notice of the abandonment filing to relinquish use of our rail spur. We have reviewed the matter with BNSF and the filings made before this agency and support a prompt approval.

Sincerely,

Michael W. Eggleston  
Director of Legal and Real Estate

cc: Rich Hartman  
Ferrellgas Area Manager - Minnesota

**PROPANE**  
EXCEPTIONAL ENERGY

One Liberty Plaza • Liberty, Missouri 64068-2970 • Telephone: 816-792-1600 • Fax: 816-792-7985

4

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Abandonment and  
Discontinuance of Service Exemption Between  
M.P. 0.00 and M.P. 1.60 near Brainerd,  
Minnesota and in and through Crow Wing  
County, Minnesota

Docket No. AB-6  
(Sub No. 421X)

**ENVIRONMENTAL REPORT**

The Burlington Northern and Santa Fe Railway Company (BNSF) proposes to file a petition under 49 U.S.C. § 10502 (a) for an exemption from 49 U.S.C. § 10903 for abandonment and discontinuance between M.P. 0.00 and M.P. in 1.60 Brainerd, Crow Wing County, Minnesota, a total distance of approximately 1.60 miles. The following information is submitted to the Surface Transportation Board (“Board” or “STB”) by BNSF in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's proposed Petition for Exemption.

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

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

**(2) Transportation system:** Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic

(passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed exemption will have a minimal effect on regional or local transportation systems and patterns. In recent years, the only shipper along the line has been Ferrellgas. However, Ferrellgas relocated and is no longer served from this rail line. Ferrellgas will continue to receive propane by rail at its new location.

**(3) Land Use:**

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

To the best of its knowledge, BNSF believes that the proposed exemption will be consistent with local or regional land use plans. The City of Brainerd and the Board of Commissioners of Crow Wing County were notified by letters dated May 13, 2003. See Exhibits B and C. As of the date of this report, neither has responded. BNSF will provide the Board copies of any response it may receive.

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

The proposed exemption will minimal effect on any existing or potential farmland along the rail route. See Exhibit D, letter from the Natural Resources Conservation Service.

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

N/A

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

BNSF does not know whether the right-of-way is suitable for alternative public uses. The City of Brainerd and the Board of Commissioners of Crow Wing County were notified by letters dated May 13, 2003. See Exhibits B and C. As of the date of this report, neither has responded directly to that inquiry. BNSF will provide the Board copies of any response it may receive.

**(4) Energy:**

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

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

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

The proposed abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as this line is out of service.

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

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

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

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

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

In 2002, the 1.6 mile line had a total of 58 cars (36.25 cars per mile), which does not affect either threshold in subsections (A) or (B) above.

**(5) Air:**

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

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

No.

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

No.

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

The action will not involve an increase in truck traffic of more than 10% ADT or 50 VPD on any affected road segment as the only shipper with traffic tributary to this line in recent years has been relocated to another rail site in the area. Even when the line was in service, abandonment would not have resulted in truck traffic increases by more than 10% of ADT or 50 VPD.

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

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

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

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service. Moreover, this area of proposed action is not within a Class I or non-attainment area under the Clean Air Act.

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

This action will have no effect on the transportation of ozone-depleting materials as the line is out of service. Moreover, this line has not traditionally accommodated shipments of ozone depleting materials.

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

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

N/A

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

N/A

**(7) Safety:**

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

This proposed abandonment and discontinuance shall have no adverse affect on public health or public safety. There is one public crossing and no private crossings. During salvage operations on the line, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

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

Abandonment and discontinuance will not result in transportation of hazardous materials.

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

To the best of BNSF's knowledge, it is not aware of any known hazardous waste site or sites where there have been known hazardous materials spills on the right of way. However, a portion of the right of way is adjacent to a former tie treating plant that is currently on both the state and federal Superfund list.

**(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.

BNSF believes that the proposed exemption will have no adverse affect on endangered or threatened species or areas designated as critical habitat. Blanding's Turtles (*Emydoidea blandingii*), a state-listed threatened species, are reported from the vicinity of the project's area. See Exhibit E, letter from the Minnesota Department of Natural Resources. BNSF proposes to advise contractors involved in salvage to consult with the Minnesota Department of Natural Resources in the event any Blandings Turtles are sighted in the project area.

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

The proposed exemption should not affect wildlife sanctuaries or refuges, nor National or State parks or forests. There are no Federal lands administered by the Bureau of Land Management along the proposed impact area. See Exhibit F, letter from the Bureau of Land Management. There are no Forest Service administered lands in the proposed impact area. See Exhibit G, letter from the United States Department of Agriculture, Forest Service.

**(9) Water:**

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

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources have been notified by a letters dated May 13, 2003. See Exhibit H and I. As of the date of this report neither has not responded. BNSF will provide the Board copies of any response it may receive.

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

Permits under 404 of the Clean Water Act are not required for the proposed exemption. See Exhibit J, letter from the Army Corps of Engineers.

BNSF does not believe that the proposed exemption will affect any designated wetlands or 100-year flood plains. The proposed abandonment does not cross the 100 year flood plain. See Exhibits K, w-mal from the Minnesota Department of Natural Resources.

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

BNSF believes that permits under 402 of the Clean Water Act are not required for the proposed exemption. The Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources have been notified by a letters dated May 13, 2003. See Exhibits H and I. As of the

date of this report, neither has not responded. BNSF will provide the Board copies of any response it may receive.

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

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

Respectfully Submitted,



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

Dated: June 9, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Abandonment and  
Discontinuance of Service Exemption Between  
M.P. 0.00 and M.P. 1.60 near Brainerd,  
Minnesota and in and through Crow Wing  
County, Minnesota

Docket No. AB-6  
(Sub No. 421X)

**HISTORICAL REPORT**

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Petition for Exemption for abandonment of its line between M.P. 0.00 and M.P. 1.60 in Brainerd, Crow Wing County, Minnesota, total distance of 1.60 miles.

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

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

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

The Brainerd, MN Trackage proposed abandonment is located on the west side of Brainerd, MN and as the trackage exits the city, it turns northward through an adjoining rural area. Brainerd's population for the year of 2000 was 13,178. The area north of Brainerd is rural and filled with recreational homes, lakes, forested areas and some agricultural uses. The rail line corridor is 100 feet in width.

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

There are no bridges or structures that are 50 years old or older in the immediate vicinity of the right of way.

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

N/A

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

The right of way was acquired by the Brainerd and Northern Minnesota Railway in approximately 1894. The Brainerd and Northern Minnesota was acquired by the Minnesota and International Railway Company in 1901. The Minnesota and International Railway Company was acquired by the Northern Pacific (NP). In 1970, the NP merged with other railroads to become part of the Burlington Northern Railroad (BN). In 1995 BN and the Atchison Topeka and Santa Fe Railway (ATSF) merged to become The Burlington Northern and Santa Fe Railway (BNSF).

This line is now out of service and the track materials will be removed by a qualified salvage contractor following abandonment authorization from the STB.

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

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

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

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. The abandonment should have no adverse effect on the overall line's historical characteristics. See Exhibit L, letter from the Minnesota Historical Society.

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

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

Respectfully submitted,

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

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

Date: June 9, 2004

**CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)**

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on May 20, 2004, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

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

Dennis Gimmestad  
Minnesota Historical Society  
Minnesota State Historic Preservation  
Office  
345 W. Kellogg Blvd.  
St. Paul, MN 55102-1906

Regional Director  
National Park Service  
Midwest Region  
1709 Jackson St.  
Omaha, NE 68102

Chris Hanson  
Assistant Field Office Manager  
Division of Lands and Renewable  
Resources  
Bureau of Land Management  
Milwaukee Field Office  
310 W. Wisconsin Ave., Suite 450  
Milwaukee, WI 53203

Robert Whiting  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
St. Paul District  
190 Fifth Street East  
St. Paul, MN 55101

William Morrissey  
Director  
Minnesota Department of Natural  
Resources  
Parks and Recreations Division  
500 Lafayette Road  
St. Paul, MN 55155-4040

Sarah Hoffman  
Endangered Species Environmental Review  
Coordinator  
Minnesota Department of Natural Resources  
Heritage and Nongame Research Program  
Box 25  
500 Lafayette Road  
St. Paul, MN 55155-4040

Anne C. Shea  
U.S. Fish & Wildlife Service  
Region 3  
1 Federal Drive  
BHW Federal Building  
Fort Snelling, MN 55111-4056

Paul Stockinger  
Director, Air, Water, Lands, Soil and  
Minerals  
United States Department of Agriculture  
Forest Service  
310 West Wisconsin Ave., Suite 580  
Milwaukee, WI 53203

Dewayne Tautges  
Commissioner, Chair District 1  
Crow Wing Board of Commissioners  
326 Laurel Street  
County Courthouse  
Brainerd, MN 56401-3585

Daniel Vogt  
City Administrator  
Brainerd City Hall  
501 Laurel Street  
Brainerd, MN 56401

Ceil Straus  
Floodplain Community Assistance  
Program Hydrologist  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4040

Joe Oswald  
Environmental Review Coordinator  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4040

United States EPA  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Peter Herlofsky, Jr.  
Crow Wing County Administrator  
Crow Wing County Courthouse  
326 Laurel Street  
Brainerd, MN 56401-3590

Jeff Hulsether  
City Engineer  
Brainerd City Hall  
501 Laurel Street  
Brainerd, MN 56401

Mike Lieser  
Area Resource Soil Specialist  
Natural Resources Conservation Service  
Fergus Falls Service Center  
1004 Frontier Road  
Fergus Falls, MN 56537

Jennifer Olson  
Division Regional Environmental  
Management  
Section Operations & Environmental  
Review  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, MN 55155-4194

Minnesota State Clearinghouse  
c/o Minnesota Department of  
Administration  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place, Suite 350  
St. Paul, MN 55101-2147

Minnesota Department of Transportation  
Transportation Building  
395 John Ireland Boulevard  
St. Paul, MN 55155

William Hunt  
State Conservationist  
United States Department of Agriculture  
Natural Resources Conservation Service  
375 Jackson Street, Suite 600  
Saint Paul, Minnesota 55101-1854

Richard Snay  
National Geodetic Survey  
NOAA - SSMC3  
1315 East-West Highway  
Silver Spring, MD 20910

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.



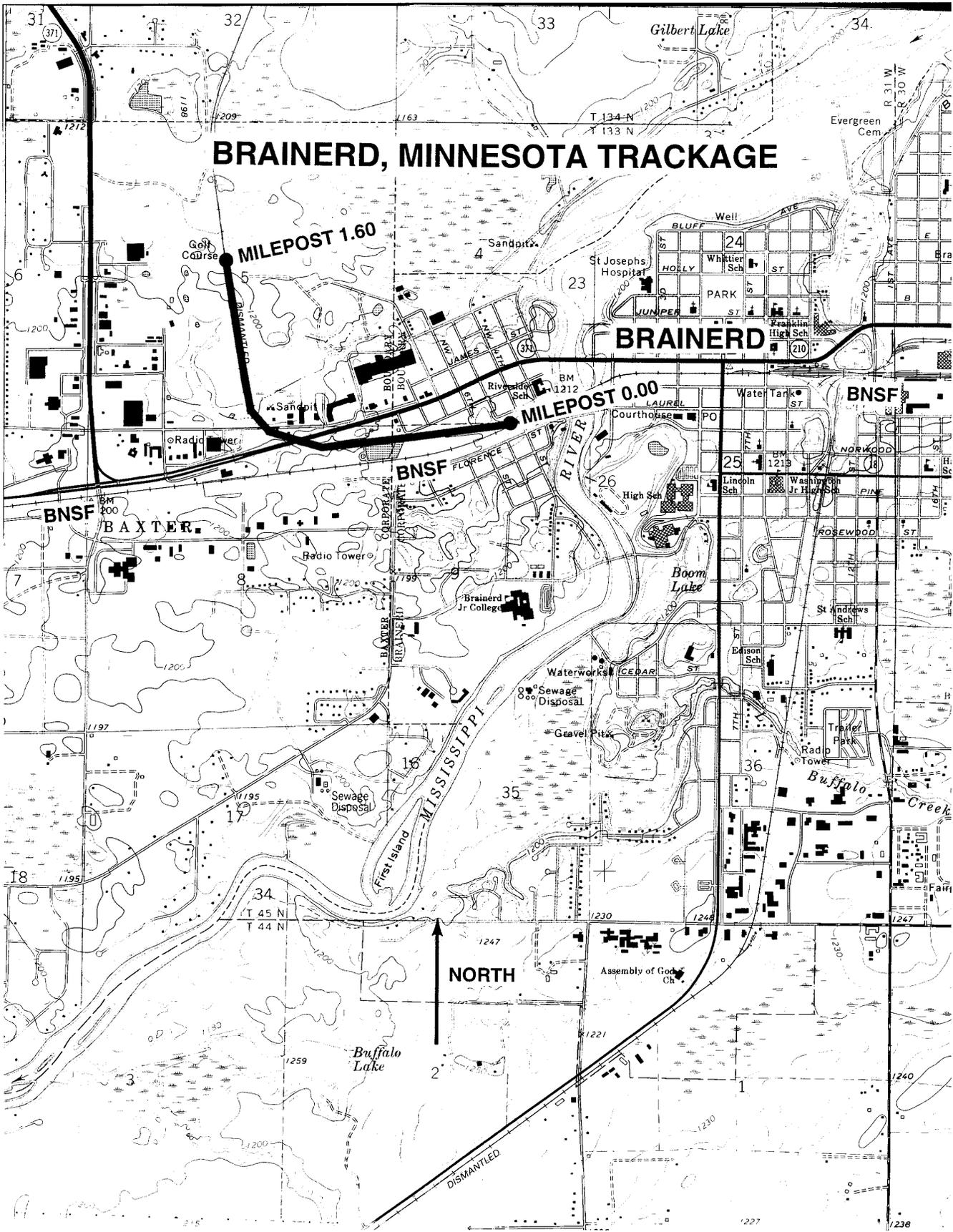
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Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: June 9, 2004

A

# BRAINERD, MINNESOTA TRACKAGE



**B**

Freeborn & Peters

May 13, 2003

Dewayne Tautges  
Commissioner, Chair, District 1  
Crow Wing County Board of  
Commissioners  
326 Laurel Street  
County Courthouse  
Brainerd, MN 56401-3585

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

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

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
of Brainerd, Minnesota***

Dear Mr. Tautges:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition to Abandon seeking authority to abandon 1.60 miles of railroad line between Milepost 0.00 and Milepost 1.60 in Brainerd, Minnesota.

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

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

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by June 15, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*

C

Freeborn & Peters

May 13, 2003

Daniel Vogt  
City Administrator  
Brainerd City Hall  
501 Laurel Street  
Brainerd, MN 56401

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

Brian Nettles  
Paralegal  
Direct 312.360.6336  
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bnettl@  
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Sincerely,

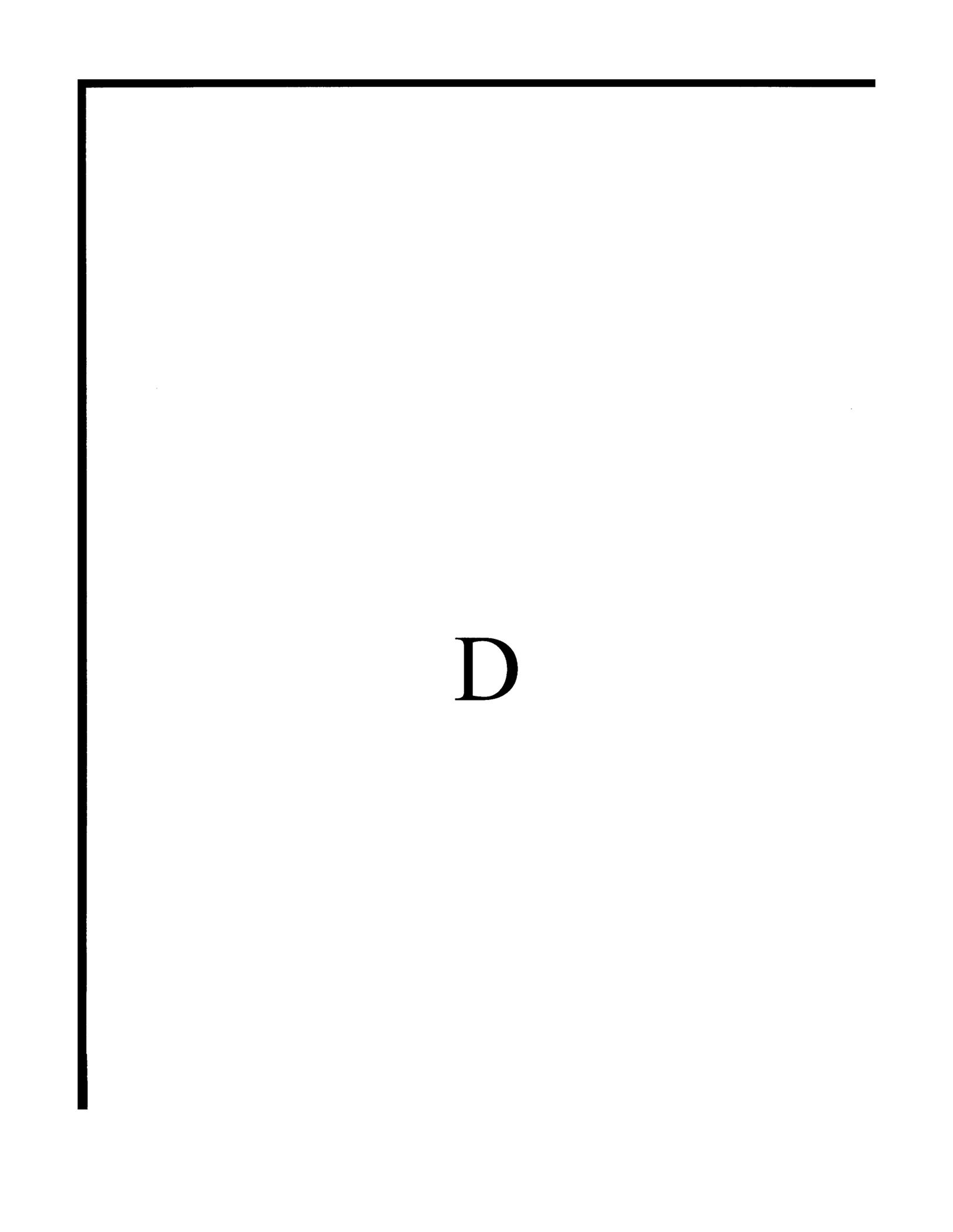


Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*



D



1004 Frontier Rd.  
Fergus Falls, MN 56537

Phone: (218) 736-5445  
FAX: (218) 736-7215



December 8, 2003

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

Re: The BN and Santa Fe Railway Co. abandonment of line in Brainerd, Mn and  
the Farmland Protection Policy Act PL97-98

Dear Mr. Nettles:

I was forwarded information concerning the above action being planned for the  
existing railbed in the City Brainerd, Mn by our Crow Wing County Field Office  
in Brainerd, Mn. I have reviewed the plans per your letter addressed to our  
Agency dated November 24, 2003.

Based on the information contained in above said correspondence, it appears  
the planned activity or railroad abandonment will be limited to removing  
railroad ties, rails and other track materials. Very little grading or  
leveling will be completed. As you state the railroad grade will remain  
intact. I am assuming culverts and waterways will remain also. Based on this  
information the abandoning process should have minimal effect on any existing  
or potential farmland along the rail route.

I am including with this letter a copy of the Public Law 97-98 The Farmland  
Protection Policy Act for your information and reference.

This letter will address any FPPA issues that may have been raised with this  
activity. If you have any questions about this response or the scope of the  
abandonment activity changes greatly feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Mike Lieser".

Mike Lieser  
Area Resource Soil Specialist

Enclosures

Cc: Mary Jane Reetz, DC, NRCS, Brainerd, MN  
File

## TITLE 7--AGRICULTURE

### CHAPTER VI--NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 658--FARMLAND PROTECTION POLICY ACT--Table of Contents

##### Sec. 658.1 Purpose.

This part sets out the criteria developed by the Secretary of Agriculture, in cooperation with other Federal agencies, pursuant to section 1541(a) of the Farmland Protection Policy Act (FPPA or the Act) 7 U.S.C. 4202(a). As required by section 1541(b) of the Act, 7 U.S.C. 4202(b), Federal agencies are (a) to use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland, (b) to consider alternative actions, as appropriate, that could lessen adverse effects, and (c) to ensure that their programs, to the extent practicable, are compatible with State and units of local government and private programs and policies to protect farmland. Guidelines to assist agencies in using the criteria are included in this part. The Department of Agriculture (hereinafter USDA) may make available to States, units of local government, individuals, organizations, and other units of the Federal Government, information useful in restoring, maintaining, and improving the quantity and quality of farmland.

##### Sec. 658.2 Definitions.

(a) Farmland means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or local importance. "Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

(b) Federal agency means a department, agency, independent commission, or other unit of the Federal Government.

(c) Federal program means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term "Federal program" does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

2. For the purposes of this section, a project is considered to be "beyond the planning stage and in either the active design or construction state on August 4, 1984" if, on or before that date, actual construction of the project had commenced or:

(i) Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) The engineering or architectural design had begun or such services had been secured by contract. The phrase "undertaking, financing, or assisting construction or improvement projects" includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the

phrase "acquiring, managing, or disposing of Federal lands and facilities" refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

(d) State or local government policies or programs to protect farmland include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

(e) Private programs to protect farmland means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

(f) Site means the location(s) that would be converted by the proposed action(s).

(g) Unit of local government means the government of a county, municipality, town, township, village, or other unit of general government below the State level, or a combination of units of local government acting through an areawide agency under a State law or an agreement for the formulation of regional development policies and plans.

#### Sec. 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Natural Resources Conservation Service (NRCS) field office serving the area will provide the assistance. Many State or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a Federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-Federal unit of government applies for Federal assistance to convert farmland to a nonagricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the Federal agency, on the basis of the analysis set forth in Sec. 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a Federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 of the Act, 7 U.S.C. 4202, and regulations issued pursuant to that section.

Sec. 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each Federal agency shall use the criteria provided in Sec. 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such Federal programs, to the extent practicable, are compatible with State, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency may determine whether or not a site is farmland as defined in Sec. 658.2(a) or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD-1006, the Farmland Conversion Impact Rating Form, available at NRCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and NRCS will so notify the agency. If the site is determined by NRCS to be subject to the Act, then NRCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in Sec. 658.5(a). NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by NRCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to Federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from NRCS the score of a site's relative value as described in Sec. 658.4(a) and then applies the site assessment criteria which are set forth in Sec. 658.5 (b) and (c), the agency will assign to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.

(3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores totaling 160 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in Sec. 658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rulemaking in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in Sec. 658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction

state on the effective date of the Act. Section 1547(b) exempts acquisition or use of farmland for national defense purposes. There are no other exemptions of projects by category in the Act.

(f) Numerous States and units of local government are developing and adopting Land Evaluation and Site assessment (LESA) systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use. Therefore, States and units of local government may have already performed an evaluation using criteria similar to those contained in this rule applicable to Federal agencies. USDA recommends that where sites are to be evaluated within a jurisdiction having a State or local LESA system that has been approved by the governing body of such jurisdiction and has been placed on the NRCS State conservationist's list as one which meets the purpose of the FPPA in balance with other public policy objectives, Federal agencies use that system to make the evaluation.

(g) To meet reporting requirements of section 1546 of the Act, 7 and for data collection purposes, after the agency has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, the agency is requested to return a copy of the Form AD-1006, which indicates the final decision of the agency, to the NRCS field office.

(h) Once a Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's, or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional redundant FPPA analysis.

#### Sec. 658.5 Criteria.

This section states the criteria required by section 1541(a) of the Act, 7 U.S.C. 4202(a). The criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (1) the land evaluation criterion, relative value, for which NRCS will provide the rating or score, and (2) the site assessment criteria, for which each Federal agency must develop its own ratings or scores.

The criteria are as follows:

(a) Land Evaluation Criterion--Relative Value. The land evaluation criterion is based on information from several sources including national cooperative soil surveys or other acceptable soil surveys, NRCS field office technical guides, soil potential ratings or soil productivity ratings, land capability classifications, and important farmland determinations. Based on this information, groups of soils within a local government's jurisdiction will be evaluated and assigned a score between 0 to 100, representing the relative value, for agricultural production, of the farmland to be converted by the project compared to other farmland in the same local government jurisdiction. This score will be the Relative Value Rating on Form AD 1006.

(b) Site Assessment Criteria. Federal agencies are to use the following criteria to assess the suitability of each proposed site or design alternative for protection as farmland along with the score from the land evaluation criterion described in Sec. 658.5(a). Each criterion will be given a score on a scale of 0 to the maximum points shown. Conditions suggesting top, intermediate and bottom scores are indicated for each criterion. The agency would make scoring decisions in the context of each proposed site or alternative action by examining the site, the surrounding area, and the programs and policies of the State or local unit of government in which the site is located. Where one given location has more than one design alternative, each design should be considered as an alternative site. The site assessment criteria are:

(1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?

More than 90 percent--15 points

90 to 20 percent--14 to 1 point(s)

Less than 20 percent--0 points

(2) How much of the perimeter of the site borders on land in nonurban use?

More than 90 percent--10 points

90 to 20 percent--9 to 1 point(s)

Less than 20 percent--0 points

(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than 5 of the last 10 years?

More than 90 percent--20 points

90 to 20 percent--19 to 1 points(s)  
Less than 20 percent--0 points

(4) Is the site subject to State or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?

Site is protected--20 points  
Site is not protected--0 points

(5) How close is the site to an urban built-up area?

The site is 2 miles or more from an urban built-up area--15 points  
The site is more than 1 mile but less than 2 miles from an urban built-up area--10 points  
The site is less than 1 mile from, but is not adjacent to an urban built-up area--5 points  
The site is adjacent to an urban built-up area--0 points

(6) How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote nonagricultural use?

None of the services exist nearer than 3 miles from the site--15 points  
Some of the services exist more than 1 but less than 3 miles from the site--10 points  
All of the services exist within  $\frac{1}{2}$  mile of the site--0 points

(7) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county? (Average farm sizes in each county are available from the NRCS field offices in each State. Data are from the latest available Census of Agriculture, Acreage of Farm Units in Operation with \$1,000 or more in sales.)

As large or larger--10 points  
Below average--deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average--9 to 0 points

(8) If this site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?

Acreage equal to more than 25 percent of acres directly converted by the project--10 points  
Acreage equal to between 25 and 5 percent of the acres directly converted by the project--9 to 1 point(s)  
Acreage equal to less than 5 percent of the acres directly converted by the project--0 points

(9) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

All required services are available--5 points  
Some required services are available--4 to 1 point(s)  
No required services are available--0 points

(10) Does the site have substantial and well-maintained on-farm investments such as barns, other storage buildings, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?

High amount of on-farm investment--20 points  
Moderate amount of on-farm investment--19 to 1 point(s)  
No on-farm investment--0 points

(11) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

Substantial reduction in demand for support services if the site is converted--10 points  
Some reduction in demand for support services if the site is converted--9 to 1 point(s)  
No significant reduction in demand for support services if the site is converted--0 points

(12) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?

Proposed project is incompatible with existing agricultural use of surrounding farmland--10 points  
Proposed project is tolerable to existing agricultural use of surrounding farmland--9 to 1 point(s)  
Proposed project is fully compatible with existing agricultural use of surrounding farmland--0 points

(c) Corridor-type Site Assessment Criteria. The following criteria are to be used for projects that have a linear or corridor-type site configuration connecting two distant points, and crossing several different tracts of land. These include utility lines, highways, railroads, stream improvements, and flood control systems. Federal agencies are to assess the suitability of each corridor-type site or design alternative for protection as farmland along with the land evaluation information described in Sec. 658.4(a). All criteria for corridor-type sites will be scored as shown in Sec. 658.5(b) for other sites, except as noted below:

- (1) Criteria 5 and 6 will not be considered.
- (2) Criterion 8 will be scored on a scale of 0 to 25 points, and criterion 11 will be scored on a scale of 0 to 25 points.

#### Sec. 658.6 Technical assistance.

(a) Section 1543 of the Act, 7 U.S.C. 4204 states, "The Secretary is encouraged to provide technical assistance to any State or unit of local government, or any nonprofit organization, as determined by the Secretary, that desires to develop programs or policies to limit the conversion of productive farmland to nonagricultural uses." In Sec. 2.62, of 7 CFR part 2, subtitle A, NRCS is delegated leadership responsibility within USDA for the activities treated in this part.

(b) In providing assistance to States, local units of government, and nonprofit organizations, USDA will make available maps and other soils information from the national cooperative soil survey through NRCS field offices.

(c) Additional assistance, within available resources, may be obtained from local offices of other USDA agencies. The Agricultural Stabilization and Conservation Service and the Forest Service can provide aerial photographs, crop history data, and related information. A reasonable fee may be charged. In many States, the Cooperative Extension Service can provide help in understanding and identifying farmland protection issues and problems, resolving conflicts, developing alternatives, deciding on appropriate actions, and implementing those decisions.

(d) Officials of State agencies, local units of government, nonprofit organizations, or regional, area, State-level, or field offices of Federal agencies may obtain assistance by contacting the office of the NRCS State conservationist. A list of Natural Resources Conservation Service State office locations appears in Appendix A, Sec. 661.6 of this title. If further assistance is needed, requests should be made to the Assistant Secretary for Natural Resources and Environment, Office of the Secretary, Department of Agriculture, Washington, DC 20250.

#### Sec. 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

(a) Section 1542(a) of the Act, 7 U.S.C. 4203, states, "Each department, agency, independent commission or other unit of the Federal Government, with the assistance of the Department of Agriculture, shall review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provision thereof will prevent such unit of the Federal Government from taking appropriate action to comply fully with the provisions of this subtitle."

(b) Section 1542(b) of the Act, 7 U.S.C. 4203, requires, as appropriate, each department, agency, independent commission, or other unit of the Federal Government, with the assistance of the Department of Agriculture, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of the Act.

(c) USDA will provide certain assistance to other Federal agencies for the purposes specified in section 1542 of the Act, 7 U.S.C. 4203. If a Federal agency identifies or suggests changes in laws, administrative rules and regulations, policies, or procedures that may affect the agency's compliance with the Act, USDA can advise the agency of the probable effects of the changes on the protection of farmland. To request this assistance, officials of Federal agencies should correspond with the Chief, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

(d) To meet the reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, each Federal agency is requested to report to the Chief of the Natural Resources Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b). Until an agency fully implements those sections, the agency should continue to make the annual report, but may omit the report upon full implementation. However, an agency is requested to file an annual report for any future year in which the agency has substantially changed its process for compliance with the Act.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

E



## Minnesota Department of Natural Resources

Natural Heritage and Nongame Research Program, Box 25

500 Lafayette Road

St. Paul, Minnesota 55155-40\_\_

Phone: (651) 296-7863 Fax: (651) 296-1811 E-mail: sarah.hoffmann@dnr.state.mn.us

June 17, 2003

Brian Nettles  
Freeborn & Peters  
311 S. Wacker Drive  
Chicago, IL 60606-6677

Re: Request for Natural Heritage information for vicinity of proposed Brainerd Railroad Abandonment  
T133N R28W Sections 5, 8 & 9, Crow Wing County  
NHNRP Contact #: ERDB 20031085

Dear Mr. Nettles,

The Minnesota Natural Heritage database has been reviewed to determine if any rare plant or animal species or other significant natural features are known to occur within an approximate one-mile radius of the area indicated on the map enclosed with your information request. Based on this review, there are 12 known occurrences of rare species or natural communities in the area searched (for details, see enclosed database printout and explanation of selected fields). Following are specific comments for **only those elements that may be impacted** by the proposed project. Rare feature occurrences not listed below are not anticipated to be affected by the proposed project.

- Blanding's Turtles (*Emydoidea blandingii*), a state-listed threatened species, are reported from the vicinity of the project area. For your information, I have attached a fact sheet and a flyer about the Blanding's Turtle. The fact sheet is intended to provide you with background information regarding habitat use, life history, and reasons for the species' decline, as well as recommendations for avoiding and minimizing impacts to this rare turtle. As you will note, there are two lists of recommendations. The first list contains recommendations to prevent harm to turtles during construction work, and is relative to all areas inhabited by Blanding's Turtles. Please refer to this first list of recommendations for your project. The second column expands on the first column, and contains greater protective measures to be considered for areas known to be of state-wide importance to Blanding's Turtles, or any area where greater protection for turtles is desired. Your project area is not within one of these priority areas. The flyer, which should be given to all contractors working in the area, contains an illustration and description of the Blanding's Turtle, as well as a summary of the recommendations provided in the fact sheet.

The Natural Heritage database is maintained by the Natural Heritage and Nongame Research Program, a unit within the Division of Ecological Services, Department of Natural Resources. It is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, natural communities, and other natural features. Its purpose is to foster better understanding and protection of these features.

Because our information is not based on a comprehensive inventory, there may be rare or otherwise significant natural features in the state that are not represented in the database. A county-by-county survey of rare natural features is now underway, and is in progress for Crow Wing County. Our

DNR Information: 651-296-6157 • 1-888-646-6367 • TTY: 651-296-5484 • 1-800-657-3929

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Minnesota Natural Heritage Database  
 Element Occurrence Records

BRAINERD RAILROAD ABANDONMENT  
 T133N R28W SEC. 5, 8 & 9, CROW WING COUNTY  
 MndNR, Natural Heritage and Nongame Research Program

14:09 Tuesday, JUNE 17, 2003  
 Copyright 2003 State of Minnesota DNR

TWP	RNG	PRIMARY SECTION	FED STATUS	MN STATUS	S RANK	ELEMENT and OCCURRENCE NUMBER
T045N	R31W	25		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #184
T133N	R28W	04		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #190
T133N	R28W	04		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #532
T133N	R28W	04	LT	SPC		HALIAEETUS LEUCOCEPHALUS (BALD EAGLE) #2048
T133N	R28W	05			S2	JACK PINE BARRENS #1
T133N	R28W	09		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #574
T133N	R28W	17		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #962
T133N	R28W	18		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #396
T133N	R28W	18		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #655
T134N	R28W	32		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #857
T134N	R28W	33		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #825
T134N	R28W	33		THR		EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #826

PAUL BUNYAN ARBORETUM

MANAGED AREA

Minnesota Natural Heritage Database  
Element Occurrence Records  
BRAINERD RAILROAD ABANDONMENT  
T133N R28W SEC. 5, 8 & 9, CROW WING COUNTY  
MndDNR, Natural Heritage and Nongame Research Program

7045N R31W SWS25 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #184  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: BRAINERD 26  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: WHITEMAN, G. (1995 BLANDING'S TURTLE REPORT)  
1987: 1 TURTLE, MEASURING 9.25 BY 6.75 INCHES OBSERVED BY SCHWENGER WALKING ACROSS ROAD BTWN BOOM LAKE AND MISSISSIPPI RIV, 50 FEET NORTH OF BRIDGE. AREA HAS SANDY SOIL BUT NO OBVIOUS SAND BANKS FOR NESTING. RELATIVELY HIGH TRAFFIC AND PEOPLE USE OF AREA. KIWANIS PARK IS LOCATED ON BOOM LAKE, WEST OF HIGHWAY 371 IN BRAINERD. 1995: 1 FEMALE, 10" X 7" FOUND IN BRAINERD HIGH SCHOOL SWIMMING POOL & RELEASED ALONG BEAVER DAM RD, NORTH OF BRAINERD.  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Last Observed Date: 03 May 1995  
Quad Map: BRAINERD (M13C)  
Latitude: 46 20' 52" Long: 94 12' 18"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

T133N R28W NWNE04 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #190  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: EAST BAXTER 4  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: LANG, J. (BLANDING'S TURTLE IN THE BRAINERD/BAXTER REGION); HEIKKENEN, B. 1987: 1 TURTLE, SIZE UNKNOWN, OBSERVED ON BEAVER DAM ROAD OFF OF RIVERSIDE DRIVE, NEAR BRAINERD. 1998: 1 FEMALE TURTLE (OPV) CAPTURED, MEASURED, MARKED & RELEASED ON 4 JUNE.  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Last Observed Date: 04 June 1998  
Quad Map: BRAINERD (M13C)  
Latitude: 46 22' 3" Long: 94 12' 36"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

T133N R28W SENW04 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #532  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: EAST BAXTER 4  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: WOIZESCHKE, K. DNR  
ONE FEMALE BLANDING'S TURTLE WAS BROUGHT TO DNR OFFICE BY TRAILS AND WATERWAY CREW. SHELL LENGTH WAS 10 INCHES. TURTLE WAS FOUND CROSSING ROAD FROM WETLAND TO UPLAND NEAR THE WHISKEY CREEK WATERFOWL IMPOUNDMENT. THIS AREA CONTAINS A LOT OF FLOATING BOG AND ALDER. THE TURTLE WAS TRAVELLING TOWARDS THE MISSISSIPPI R FLOODPLAIN. K. WOIZESCHKE RETURNED THE TURTLE TO LOCATION WHERE IT HAD BEEN FOUND. THE DATE: 7/8/79 AND THE NAME: L. VAN WINKLE WERE CARVED IN THE SHELL.  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Last Observed Date: 23 May 1990  
Quad Map: BRAINERD (M13C)  
Latitude: 46 21' 46" Long: 94 12' 53"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

T133N R28W NENW04 CROW WING COUNTY, MN  
Element: HALIABETUS LEUCOCEPHALUS (BALD EAGLE) #2048  
State Status: SPECIAL CONCERN  
EO Size: EO Rank: Current Status: Intended Status:  
Site: EAST BAXTER 4  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: WOIZESCHKE, K. (DNR)  
NESTING AREA. WHISKEY CREEK.  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Last Observed Date: 2000  
Quad Map: BRAINERD (M13C)  
Latitude: 46 22' 8" Long: 94 13' 4"  
Precision: within 0.25 mile, confirmed  
Voucher: CR -048 Verification: verified

T133N R28W SWN18 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #655  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: EAST BAXTER 18  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: BRASTRUP, T. (1993 BLANDING'S TURTLE SURVEY)  
1992: ONE TURTLE WITH 1.5 X 2.5 PLASTRON OBSERVED ON ROAD BY T. KEE. 3 RINGS COUNTED. HOLE IN PLASTRON IN FRONT OF HIND LEG, BB FELLET-SIZED. SLIDES TAKEN.  
(1992 TURTLE REPORT). 1993: 1 LARGE FEMALE TURTLE FOUND DEAD ON HWY 48, 100 YDS EAST OF INTERSECTION.

T134N R28W SESW32 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #857  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: NORTH LONG LAKE 32  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: LAND, J. (BLANDING'S TURTLE IN THE BRAINERD/BAXTER REGION)  
1 FEMALE TURTLE (LP) CAPTURED, MEASURED, MARKED AND RELEASED.

T134N R28W NWN33 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #825  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: NORTH LONG LAKE 33  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: PADGETT, J. (1995 BLANDING'S TURTLE REPORT)  
5/12: 2 TURTLES (ONE-7X8 INCHES, OTHER 4.25X4.75 INCHES) OBSERVED IN BOG AREA NEAR CULVERT, PART OF GILBERT LAKE CHAIN. PHOTOS TO BE SENT TO BRAINERD DNR.  
4/29: 1 TURTLE (8-9 INCHES) OBSERVED CROSSING BEAVER DAM ROAD. OBSERVER TOOK PHOTOS & HELPED TURTLE ACROSS RD. 7/25: 1 LARGE TURTLE OBSERVED COMING OUT OF SWAMP & CROSSING DAL-MAR DRIVE.

T134N R28W NWN33 CROW WING COUNTY, MN  
Element: EMYDOIDEA BLANDINGII (BLANDING'S TURTLE) #826  
State Status: THREATENED  
EO Size: EO Rank: Current Status: Intended Status:  
Site: NORTH LONG LAKE 33  
Ownership: Owner unknown  
Managed Area(s): not managed or no record  
Source: PADGETT, J. (1996 BLANDING'S TURTLE REPORT)  
1 LARGE TURTLE OBSERVED CROSSING FROM MARSHY AREA TO SANDY PINE TREE GROVE.

Last Observed Date: 20 June 1993  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Quad Map: BAXTER (M12D)  
Latitude: 46 20' 2" Long: 94 15' 45"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: photo rec.

Last Observed Date: 01 July 1997  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Quad Map: BRAINERD (M13C)  
Latitude: 46 22' 11" Long: 94 14' 15"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

Last Observed Date: 25 July 1995  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Quad Map: MERRIFIELD (M13B)  
Latitude: 46 22' 51" Long: 94 13' 9"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

Last Observed Date: 07 June 1996  
DNR Region: 3  
Wildlife Area: 301  
Forestry District: 311  
Quad Map: MERRIFIELD (M13B)  
Latitude: 46 23' 2" Long: 94 12' 53"  
Precision: within 0.25 mile, confirmed  
Voucher: Verification: sight or sound rec.

## Environmental Review Fact Sheet Series

### Endangered, Threatened, and Special Concern Species of Minnesota

## Blanding's Turtle (*Emydoidea blandingii*)

Minnesota Status: Threatened  
Federal Status: none

State Rank<sup>1</sup>: S2  
Global Rank<sup>1</sup>: G4

### HABITAT USE

Blanding's turtles need both wetland and upland habitats to complete their life cycle. The types of wetlands used include ponds, marshes, shrub swamps, bogs, and ditches and streams with slow-moving water. In Minnesota, Blanding's turtles are primarily marsh and pond inhabitants. Calm, shallow water bodies (Type 1-3 wetlands) with mud bottoms and abundant aquatic vegetation (cattails, water lilies, etc.) are preferred, and extensive marshes bordering rivers provide excellent habitat. Small temporary wetlands (those that dry up in the late summer or fall) are frequently used in spring and summer -- these fishless pools are amphibian and invertebrate breeding habitat, which provides an important food source for Blanding's turtles. Also, the warmer water of these shallower areas probably aids in the development of eggs within the female turtle. Nesting occurs in open (grassy or brushy) sandy uplands, often some distance from water bodies. Frequently, nesting occurs in traditional nesting grounds on undeveloped land. Blanding's turtles have also been known to nest successfully on residential property (especially in low density housing situations), and to utilize disturbed areas such as farm fields, gardens, under power lines, and road shoulders (especially of dirt roads). Although Blanding's turtles may travel through woodlots during their seasonal movements, shady areas (including forests and lawns with shade trees) are not used for nesting. Wetlands with deeper water are needed in times of drought, and during the winter. Blanding's turtles overwinter in the muddy bottoms of deeper marshes and ponds, or other water bodies where they are protected from freezing.

### LIFE HISTORY

Individuals emerge from overwintering and begin basking in late March or early April on warm, sunny days. The increase in body temperature which occurs during basking is necessary for egg development within the female turtle. Nesting in Minnesota typically occurs during June, and females are most active in late afternoon and at dusk. Nesting can occur as much as a mile from wetlands. The nest is dug by the female in an open sandy area and 6-15 eggs are laid. The female turtle returns to the marsh within 24 hours of laying eggs. After a development period of approximately two months, hatchlings leave the nest from mid-August through early-October. Nesting females and hatchlings are often at risk of being killed while crossing roads between wetlands and nesting areas. In addition to movements associated with nesting, all ages and both sexes move between wetlands from April through November. These movements peak in June and July and again in September and October as turtles move to and from overwintering sites. In late autumn (typically November), Blanding's turtles bury themselves in the substrate (the mud at the bottom) of deeper wetlands to overwinter.

### IMPACTS / THREATS / CAUSES OF DECLINE

- loss of wetland habitat through drainage or flooding (converting wetlands into ponds or lakes)
- loss of upland habitat through development or conversion to agriculture
- human disturbance, including collection for the pet trade\* and road kills during seasonal movements
- increase in predator populations (skunks, racoons, etc.) which prey on nests and young

\*It is illegal to possess this threatened species.

ROADS cont.	
Culverts between wetland areas, or between wetland areas and nesting areas, should be 36 inches or greater in diameter, and elliptical or flat-bottomed.	Road placement should avoid separating wetlands from adjacent upland nesting sites, or these roads should be fenced to prevent turtles from attempting to cross them (contact your DNR Nongame Specialist for details).
Wetland crossings should be bridged, or include raised roadways with culverts which are 36 in or greater in diameter and flat-bottomed or elliptical (raised roadways discourage turtles from leaving the wetland to bask on roads).	Road placement should avoid bisecting wetlands, or these roads should be fenced to prevent turtles from attempting to cross them (contact your DNR Nongame Specialist for details). This is especially important for roads with more than 2 lanes.
Culverts under roads crossing streams should be oversized (at least twice as wide as the normal width of open water) and flat-bottomed or elliptical.	Roads crossing streams should be bridged.
UTILITIES	
Utility access and maintenance roads should be kept to a minimum (this reduces road-kill potential).	
Below-ground utility construction sites should be returned to original grade (trenches can trap turtles).	
LANDSCAPING AND VEGETATION MANAGEMENT	
Terrain should be left with as much natural contour as possible.	As much natural landscape as possible should be preserved (installation of sod or wood chips, paving, and planting of trees within nesting habitat can make that habitat unusable to nesting Blanding's turtles).
Graded areas should be revegetated with native grasses and forbs (some non-natives form dense patches through which it is difficult for turtles to travel).	Open space should include some areas at higher elevations for nesting. These areas should be retained in native vegetation, and should be connected to wetlands by a wide corridor of native vegetation.
Vegetation management in infrequently mowed areas -- such as in ditches, along utility access roads, and under power lines -- should be done mechanically (chemicals should not be used). Work should occur fall through spring (after October 1 <sup>st</sup> and before June 1 <sup>st</sup> ).	Ditches and utility access roads should not be mowed or managed through use of chemicals. If vegetation management is required, it should be done mechanically, as infrequently as possible, and fall through spring (mowing can kill turtles present during mowing, and makes it easier for predators to locate turtles crossing roads).

**Protecting Blanding's Turtle Nests:** Most predation on turtle nests occurs within 48 hours after the eggs are laid. After this time, the scent is gone from the nest and it is more difficult for predators to locate the nest. Nests more than a week old probably do not need additional protection, unless they are in a particularly vulnerable spot, such as a yard where pets may disturb the nest. Turtle nests can be protected from predators and other disturbance by covering them with a piece of wire fencing (such as chicken wire), secured to the ground with stakes or rocks. The piece of fencing should measure at least 2 ft. x 2 ft., and should be of medium sized mesh (openings should be about 2 in. x 2 in.). It is *very important* that the fencing be **removed before August 1<sup>st</sup>** so the young turtles can escape from the nest when they hatch!

#### REFERENCES

- <sup>1</sup>Association for Biodiversity Information. "Heritage Status: Global, National, and Subnational Conservation Status Ranks." NatureServe. Version 1.3 (9 April 2001). <http://www.natureserve.org/ranking.htm> (15 April 2001).
- Coffin, B., and L. Pfanmueller. 1988. Minnesota's Endangered Flora and Fauna. University of Minnesota Press, Minneapolis, 473 pp.

## Rare Features Database Print-outs: An Explanation of Fields

The Rare Features database is part of the Natural Heritage Information System, and is maintained by the Natural Heritage and Nongame Research Program, a unit within the Division of Ecological Services, Minnesota Department of Natural Resources (DNR).

*\*\*Please note that the print-outs are copyrighted and may not be reproduced without permission\*\**

### **Field Name: [Full (non-abbreviated) field name, if different]. Further explanation of field.**

#### **-C-**

**CBS Site:** [County Biological Survey site number]. In each county, the numbering system begins with 1.

**CLASS:** A code which classifies features by broad taxonomic group: NC = natural community; SA = special animal; SP = special plant; GP = geologic process; GT = geologic time; OT = other (e.g. colonial waterbird colonies, bat hibernacula).

**Cty:** [County]. Minnesota counties (ordered alphabetically) are numbered from 1 (Aitkin) to 87 (Yellow Medicine).

**CURRENT STATUS:** Present protection status, from 0 (owner is not aware of record) to 9 (dedicated as a Scientific and Natural Area).

#### **-D-**

**DNR Region:** 1=NW, 2=NE, 3=E Central, 4=SW, 5=SE, 6= Minneapolis/St. Paul Metro.

**DNR Quad:** [DNR Quadrangle code]. DNR-assigned code of the U.S. Geologic Survey topographic map on which the rare feature occurs.

#### **-E-**

**ELEMENT or Element:** See "Element Name (Common Name)"

**Element Name (Common Name):** The name of the rare feature. For plant and animal species records, this field holds the scientific name, followed by the common name in parentheses; for all other elements (such as plant communities, which have no scientific name) it is solely the element name.

**EO RANK:** [Element Occurrence Rank]. An evaluation of the quality and condition of natural communities from A (highest) to D (lowest).

**EO Size:** [Element Occurrence Size]. The size in acres (often estimated) of natural communities.

#### **-F-**

**FED STATUS:** [Federal Status]. Status of species under the Federal Endangered Species Law: LE=endangered, LT=threatened, C=species which have been proposed for federal listing.

**Federal Status:** See "FED STATUS"

**Forestry District:** The Minnesota DNR's Division of Forestry district number.

#### **-G-**

**GLOBAL RANK:** The abundance of an element globally, from G1 (critically imperiled due to extreme rarity on a world-wide basis) to G5 (demonstrably secure, though perhaps rare in parts of its range). Global ranks are determined by the Conservation Science Division of The Nature Conservancy.

#### **-I-**

**INTENDED STATUS:** Desired protection status. See also "CURRENT STATUS." If a complete list of protection status codes is needed, please contact the Natural Heritage Program.

#### **-L-**

**LAST OBSERVED or Last Observed Date or Last Observation:** Date of the most recent record of the element at the location.

**Latitude:** The location at which the occurrence is mapped on Natural Heritage Program maps. NOTE: There are various levels of precision in the original information, but this is not reflected in the latitude/longitude data. For some of the data, particularly historical records, it was not possible to determine exactly where the original observation was made (e.g. "Fort Snelling", or "the south shore of Lake Owasso"). Thus the latitude/longitude reflect the mapped location, and not necessarily the observation location.

**Legal:** Township, range and section numbers.

**Long:** [Longitude]. See NOTE under "Latitude"

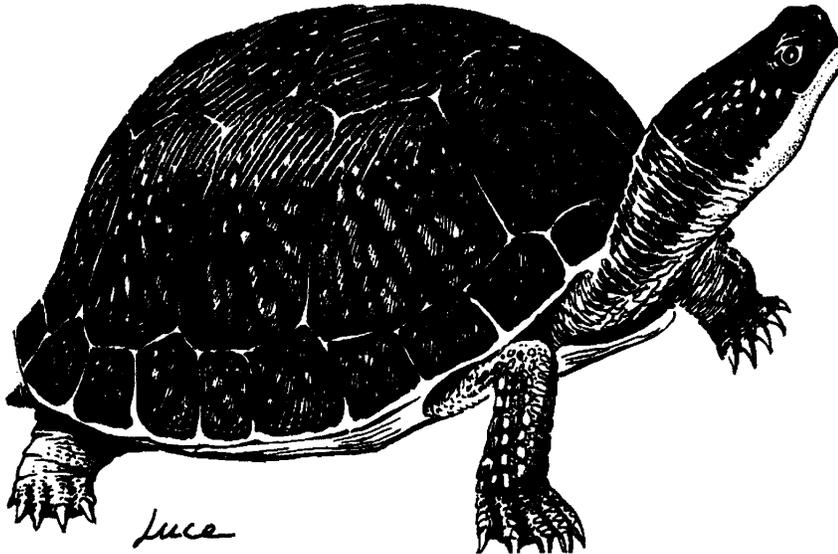
#### **-M-**

**MANAGED AREA or Managed Area(s):** Name of the federally, state, locally, or privately managed park, forest, preserve, etc., containing the occurrence, if any. If this field is blank, the element probably occurs on private land. If "(STATUTORY BOUNDARY)" occurs after the name of a managed area, the location may be a private inholding within the statutory boundary of a state forest or park.

**Map Sym:** [Map Symbol].

**MN STATUS:** [Minnesota Status]. Legal status of plant and animal species under the Minnesota endangered species law:

# CAUTION



## BLANDING'S TURTLES MAY BE ENCOUNTERED IN THIS AREA

The unique and rare Blanding's turtle has been found in this area. Blanding's turtles are a State Threatened species and are protected under Minnesota Statute 84.095, Protection of Threatened and Endangered Species. Please be careful of turtles on roads and in construction sites. For additional information on turtles, or to report a Blanding's turtle sighting, contact the DNR Nongame Specialist nearest you: Bemidji (218-755-2976); Brainerd (218-828-2228); New Ulm (507-359-6033); Rochester (507-280-5070); or St. Paul (651-297-2277).

**DESCRIPTION:** The Blanding's turtle is a medium to large turtle (5 to 10 inches) with a black or dark blue, dome-shaped shell with muted yellow spots and bars. The bottom of the shell is hinged across the front third, enabling the turtle to pull the front edge of the lower shell firmly against the top shell to provide additional protection when threatened. The head, legs, and tail are dark brown or blue-gray with small dots of light brown or yellow. A distinctive field mark is the bright yellow chin and neck.

Illustration by Don Luce, from Turtles in Minnesota, Natural History Leaflet No. 9, June 1989, James Ford Bell Museum of Natural History

F



## United States Department of the Interior

**Bureau of Land Management  
Milwaukee Field Office  
310 W. Wisconsin Ave., Suite 450  
Milwaukee, Wisconsin 53203**



IN REPLY REFER TO:  
2000(030)

May 28, 2003

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

Dear Mr. Nettles:

This is in response to your letters of May 13 and 19, 2003, to James Dryden concerning two separate proposals by the Burlington Northern and Santa Fe Railway Company (BNSF). The May 13<sup>th</sup> letter addressed BNSF's plan to file with the Surface Transportation Board a "Petition to Abandon" seeking authority to abandon 1.60 miles of railroad line between Milepost 0.00 and Milepost 1.60 in Brainerd, Minnesota. The May 19<sup>th</sup> addresses BSNF's plan to file with the Surface Transportation Board a "Notice of Exemption" seeking authority to abandon 0.99 miles of railroad line between Milepost 11.81 and Milepost 12.80 in Stillwater, Minnesota.

A search of our records shows there are no Federal lands administered by the Bureau of Land Management along either railroad line. However, please be aware that some of the original railroad grants were limited fee rights-of-way and may be subject to the Railroad Right-of-way Forfeiture and Abandonment Act of March 8, 1922, 43 U.S.C. § 912 (the 1922 Abandonment Act), and the National Trails System Improvement Act of October 4, 1988, Public Law 100-470, 16 U.S.C. § 1248 (c) - (f).

Thank you for giving us the opportunity to comment on this proposal. Our office does not have information on the location of wildlife refuges, state or national parks, and state or national forests in the immediate vicinity. You must contact the Fish and Wildlife Service, National Park Service, National Forest Service and State offices to obtain this information. If you require additional information, please contact Marcia Sieckman at (414) 297-4402.

Sincerely,

Chris Hanson  
Assistant Field Office Manager  
Division of Lands and Renewable Resources

G



United States  
Department of  
Agriculture

Forest  
Service

Eastern Region

310 West Wisconsin Ave.  
Suite 580  
Milwaukee, WI 53203

File Code: 2700

Date: June 16, 2003

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

**Re: The Burlington Northern and Santa Fe Railway Company Abandonment of Stillwater and Brainerd, Minnesota**

Dear Attorney Nettles:

There are no Forest Service-administered lands in the proposed project impact area for the following miles of railroad line:

- 0.99 miles of railroad line between Milepost 11.81 and Milepost 12.80 in Stillwater, MN.
- 1.60 miles of railroad line between Milepost 0.00 and Milepost 1.60 in Brainerd, MN.

You may want to contact the U.S. Department of the Interior, National Park Service, regarding possible impacts to the St. Croix National Scenic Riverway, which is in the vicinity of Stillwater, Minnesota.

If I may be of any further assistance, please contact me at (414) 297-3696 or [pstockinger@fs.fed.us](mailto:pstockinger@fs.fed.us).

Sincerely, ☺



PAUL M. STOCKINGER  
Director, Air, Water, Lands, Soil & Minerals



Caring for the Land and Serving People

Printed on Recycled Paper



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Freeborn & Peters

May 13, 2003

Jennifer Olson  
Division Regional Environmental  
Management Section Operations &  
Environmental Review  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, MN 55155-4194

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

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

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
of Brainerd, Minnesota***

Dear Ms. Olson:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition to Abandon seeking authority to abandon 1.60 miles of railroad line between Milepost 0.00 and Milepost 1.60 in Brainerd, Minnesota.

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

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

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

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*

I

Freeborn & Peters

May 13, 2003

Joe Oswald  
Environmental Review Coordinator  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4040

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

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

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Brainerd, Minnesota***

Dear Mr. Oswald:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition to Abandon seeking authority to abandon 1.60 miles of railroad line between Milepost 0.00 and Milepost 1.60 in Brainerd, Minnesota.

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

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

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

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*

J



**DEPARTMENT OF THE ARMY**

ST. PAUL DISTRICT, CORPS OF ENGINEERS  
ARMY CORPS OF ENGINEERS CENTRE  
190 FIFTH STREET EAST  
ST. PAUL, MN 55101-1638

REPLY TO  
ATTENTION OF

May 23, 2003

Construction-Operations  
Regulatory (03-05461-JAK)

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

Dear Mr. Nettles:

We have reviewed information about a project of Burlington Northern and Santa Fe Railway Company to abandon 1.6 miles of railroad line between Milepost 0.00 and Milepost 1.60. The project site is in Sec. 5, 8, and 9, T. 133N, R. 28W, Crow Wing County, Minnesota.

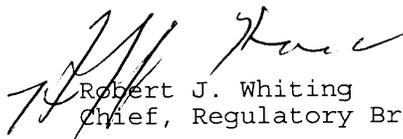
The work proposed at the location stated is not within the regulatory jurisdiction of the Corps of Engineers. No work will be done in a navigable water of the United States, and no dredged or fill material will be discharged in any water of the United States, including wetlands. Therefore, a Department of the Army permit is not required to do this work provided none of the abandoned material is placed in any Waters of the U.S., including wetlands.

This letter is valid only for the project referenced above. If any change in design, location, or purpose is contemplated, contact this office to avoid doing work that may be in violation of Federal law. PLEASE NOTE THAT THIS CONFIRMATION LETTER DOES NOT ELIMINATE THE NEED FOR STATE, LOCAL, OR OTHER AUTHORIZATIONS, SUCH AS THOSE OF THE DEPARTMENT OF NATURAL RESOURCES OR COUNTY.

The decision regarding this action is based on information found in the administrative record which documents the District's decision-making process, the basis for the decision, and the final decision.

If you have any questions, contact Jeff Koschak in our Brainerd office at (218) 829-2711. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



Robert J. Whiting  
Chief, Regulatory Branch

K

**Nettles, Brian**

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**From:** Ceil Strauss [Ceil.Strauss@dnr.state.mn.us]  
**Sent:** Monday, February 23, 2004 4:38 PM  
**To:** bnettles@freebornpeters.com  
**Cc:** Ron Morreim  
**Subject:** Burlington No & Santa Fe RR - Brainerd, MN

Mr. Nettles,

I am replying to a 2/20/04 letter to Ogbazghi Sium about whether a RR site to be abandoned is in the 100-year floodplain so you can complete an environmental report. I am attaching a portion of the FEMA Flood Insurance Rate Map (as a pdf) that includes the area you have indicated. It shows the 100-year flood areas (dark shaded areas). Note that north is to the left! I am also attaching some instructions on how to make a "FIRMette" yourself for future reference, or in case I misinterpreted the area you needed. FIRMettes are intended to be considered legal copies of smaller portions of the FEMA floodplain maps. This is an 8-1/2 x 11 size document.

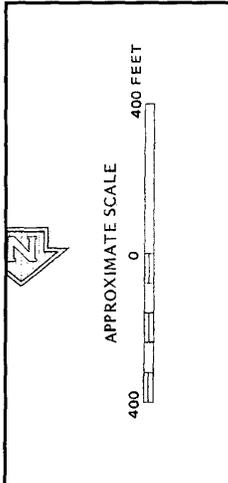
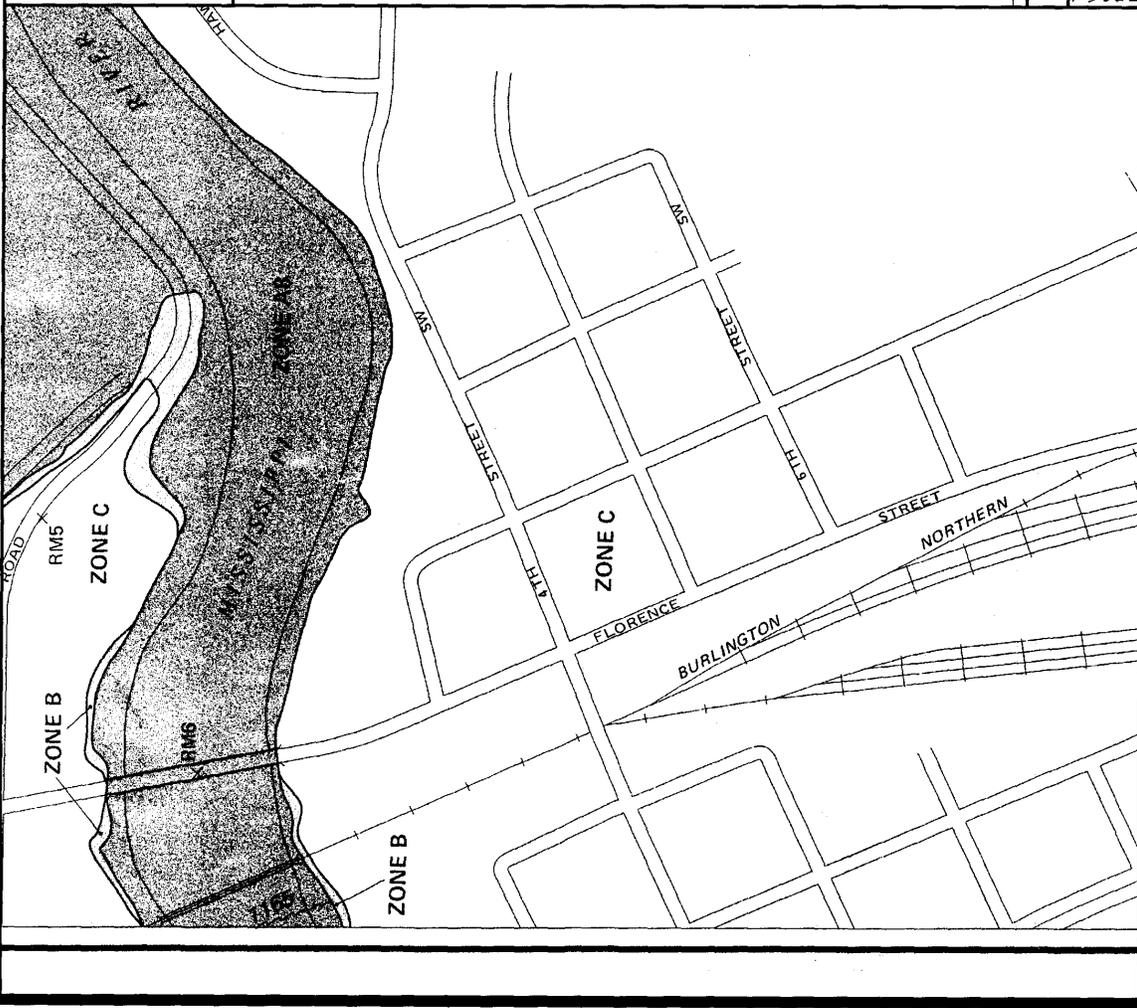
If you have further questions about water-related state regulations for this site, contact the DNR Area Hydrologist - Ron Morreim (copied on this) at 218-828-2605.

If you have trouble with the attachments, please let me know.

Ceil Strauss  
Floodplain "Community Assistance  
Program" Hydrologist  
DNR Waters  
500 Lafayette Road  
St. Paul, MN 55155-4032

(651) 296-4801 - phone  
(651) 296-0445 - fax

2/23/2004



NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
 FLOOD INSURANCE RATE MAP

CITY OF  
**BRainerd,**  
 MINNESOTA  
 CROW WING COUNTY

PANEL 4 OF 4  
 (SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER  
 270093 0004 B

EFFECTIVE DATE:  
 SEPTEMBER 2, 1981

federal emergency management agency  
 federal insurance administration

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT Op-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.nsc.fema.gov](http://www.nsc.fema.gov)

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MINNESOTA HISTORICAL SOCIETY

March 30, 2004

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

Re: Burlington Northern and Santa Fe Railway Company railroad line abandonment  
from milepost 0.00 to milepost 1.60 in and near Brainerd  
Crow Wing County  
SHPO Number: 2004-1053

Dear Mr. Nettles:

Thank you for the opportunity to review and comment on the above project. It has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800).

This stretch of line to be abandoned was constructed as part of the Brainerd and Northern Minnesota Railway Company, built in 1894. In 1901 it became the Minnesota and International Railway Company, and later part of the Northern Pacific.

Other portions of this line have been found to meet National Register criteria, and this section could qualify as well. It appears that the 1.6 miles to be abandoned are at the southern end of this line. Given the fact that the abandoned segment is short in length and is located within the city of Brainerd, we conclude that the abandonment will have no adverse effect on the overall line's historical characteristics.

Contact us at 651-296-5462 with questions or concerns.

Sincerely,

Dennis A. Gimmestad  
Government Programs & Compliance Officer

cc: Tom Cinadr, SHPO

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**DRAFT FEDERAL REGISTER NOTICE PER 49 C.F.R. 1152.60(c)**

**STB No. AB-6 (Sub No. 409X)**

**Notice of Petition for Exemption to Abandon and Discontinue Service**

On April 8, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) filed with the Surface Transportation Board, Washington, DC 20423, a petition for exemption for abandonment of its rail freight easement and discontinuance of rail service between Milepost No. 0.00 and Milepost 1.60 in and near Brainerd, Minnesota, a distance of 1.60 miles Crow Wing County, Minnesota. Stations on the line are located at points have the following USPS ZIP codes: Brainerd (56401).

There are no federally granted rights of way.

The interest of railroad employees will be protected by the conditions imposed in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service