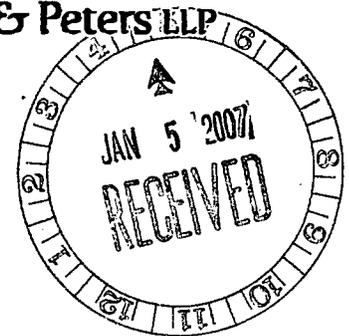


218379

Freeborn & Peters LLP



January 5, 2007

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Public Record

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

Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 435X); Docket No. AB-987X; The Burlington Northern and Santa Fe Railway Company Abandonment of Albany, Illinois

Attorneys at Law

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Suite 3000
Chicago, Illinois
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Brian Nettles
Paralegal
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Dear Secretary Williams:

I am writing in regards to the January 25, 2006 decision in which the Surface Transportation board ordered that BNSF consult with USFWS Rock Island Field office prior to the commencement of any salvage activities regarding potential impacts to federally listed threatened or endangered species that may occur in the vicinity of the line. On December 18, I talked to Kristen Lundh from the USFWS Rock Island Field office regarding potential impacts to threatened or endangered species and she suggested I write a biological assessment letter in order to determine whether the proposed abandonment will have no effect on endangered or threatened species (according to the guidelines listed at <http://www.fws.gov/midwest/Endangered/section7/s7process/index.htm>).

Chicago

Springfield

The proposed abandonment may require the removal of the track materials such as the rails, ties, bridges and railroad structures but the roadbed will be left intact. BNSF bids its salvage packages out to independent contractors. The winning bidder will start work with the removal of the rails and metal parts of the track structure. Next the wooden ties are removed and separated into second hand ties, landscape quality ties and scrap ties (which are disposed of at an appropriate site). The bridges and crossings as well as any other structures are removed last. Culverts and the rail line embankment stay intact so as not to alter the prevailing waterflows along the line. Any bridge pilings are pulled out, cut off at ground level or broken off at or below the mud line. Steel bridges are dismantled and removed. If there are concrete abutments or piers involved, they may be left intact. BNSF salvage contractors are required not to place fills or other material in water bodies, including inland waterways. Contractors are also required to limit their activities to the width of the right of way. When the salvage process is complete, waterflows in the area should not be disrupted.

On December 18, 2006 I carefully reviewed the USFWS's Section 7 Consultation website for a list of species and critical habitat that "may be present" within the project area. There are five species that may be present: the eastern prairie fringed orchid (*Platanthera leucophaea*) prairie bush clover (*Lespedeza leptostachya*), Indiana bat (*Myotis sodalists*), the bald eagle (*Haliaeetus leucocephalus*), and the Higgins eye pearl mussel (*Lampsilis higginsii*).

Freeborn & Peters LLP

January 5, 2007

Page 2

The proposed abandonment will have no effect on the eastern prairie forged orchid, the prairie bush clover or the Indiana bat. According to the USFWS, there is no record of the eastern prairie forged orchid, the prairie bush clover or the Indiana bat in Whiteside and Rock Island County. See Exhibit A, June 28, 2005 letter from the USFWS. Since there is no record of any eastern prairie forged orchid, prairie bush clover or the Indiana bat in the vicinity of the proposed abandonment, the salvaging activities will have no effect on any of the species. The bald eagle is listed as wintering Whiteside and Rock Island counties. See Exhibit A. The proposed removal of track materials will not occur until the warmer months in the spring and summer, thus the abandonment will not affect the wintering eagles. Since the bald eagles will not be present in the vicinity of the proposed abandonment when salvaging activities will occur, there will be no effect on bald eagles. In the event that eagles are spotted in the vicinity of the proposed abandonment, BNSF will require its salvage contractors to take every measure and precaution to ensure that eagles are not harassed, harmed or disturbed nor will they clear any trees. The proposed abandonment will not adversely affect the Higgins eye pearlymussel. There is no record of the Higgins eye pearlymussel in the vicinity of the proposed abandonment. The closest known essential habitat for the Higgins eye pearlymussel is located in Cordova, Rock Island County, Illinois, which is approximately ten miles from Albany. See Exhibit A. Since there is no record of the Higgins eye pearlymussel in the vicinity of the proposed abandonment, salvaging activities will have no effect on the Higgins eye pearlymussel.

For these reasons, we conclude that the abandonment of 5.09 miles of railroad line between M.P. 20.31 to M.P. 25.40 in and near Albany Illinois will have no effect on the eastern prairie fringed orchid, prairie bush clover, Indiana bat, the bald eagle, or the Higgins eye pearlymussel.

Sincerely,



Brian Nettles

/bn
Enclosures

EXHIBIT A



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Rock Island Field Office
4469 48th Avenue Court
Rock Island, Illinois 61201
Phone: (309) 793-5800 Fax: (309) 793-5804



IN REPLY REFER
TO

FWS/RIFO

June 28, 2005

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

Dear Mr. Nettles:

This is in response to your letter of May 24, 2005, requesting endangered species information for the abandonment of 5.09 miles of railroad line between M.P. 20.31 to M.P. 25.40 in and near Albany, Rock Island and Whiteside Counties, Illinois. It is our understanding the proposed action may require the removal of track materials such as rails and ties, but the railbed will be left in tact.

To facilitate compliance with Section 7(c) of the Endangered Species Act of 1973, as amended, Federal action agencies are required to obtain from the Fish and Wildlife Service information concerning any species, listed or proposed to be listed, which may be present in the area of a proposed action.

Enclosed is a species list, including habitat requirements, of species that may occur in the above counties. Pursuant to Section 7 of the Endangered Species Act of 1973, as revised, it is the responsibility of the Federal action agency (agency), that licenses, permits, or funds the proposed activity, to use the species list and habitat descriptions we have provided to determine if any listed threatened or endangered species or designated critical habitats are present. If suitable habitat is found in the project area, surveys may be needed to determine if listed species are present, and this field office should be contacted for further assistance.

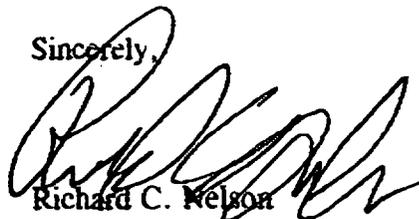
These comments provide technical assistance only and do not constitute the report of the Secretary of the Interior on the project within the meaning of Section 2(b) of the Fish and Wildlife Coordination Act, do not fulfill the requirements under Section 7 of the Endangered Species Act, nor do they represent the review comments of the U.S. Department of the Interior on any forthcoming environmental statement.

Mr. Brian Nettles

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If you have any questions regarding our comments, please contact Kristen Lundh of my staff at (309) 793-5800 ext. 215.

Sincerely,



Richard C. Nelson
Field Supervisor

Enclosure

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(2005)\Illinois\Rock Island + Freeborn 6-28-05 (RR).doc

Habitat Descriptions for Federal Threatened and Endangered Species in Whiteside and Rock Island Counties, Illinois

The eastern prairie fringed orchid (*Platanthera leucophaea*) is listed as threatened and considered to potentially occur statewide in Illinois based on its historical records and habitat distribution, but we are unaware of any record for Whiteside or Rock Island Counties. It occupies mesic to wet grassland habitats. There is no critical habitat designated for this species. Federal regulations prohibit any commercial activity involving this species or the destruction, malicious damage, or removal of this species from Federal land or any other lands in knowing violation of State law or regulation, including State criminal trespass law. Growth of the prairie fringed orchid begins in May and flowering occurs in July. This species should be searched for whenever wet prairie remnants or other wet meadows are encountered.

The prairie bush clover (*Lespedeza leptostachya*) is listed as threatened and considered to potentially occur statewide in Illinois based on its historical records and habitat distribution, but we are unaware of any record for Whiteside or Rock Island Counties. It occupies dry to mesic prairies with gravelly soil. There is no critical habitat designated for this species. Federal regulations prohibit any commercial activity involving this species or the destruction, malicious damage, or removal of this species from Federal land or any other lands in knowing violation of State law or regulation, including State criminal trespass law. This species should be searched for whenever prairie remnants are encountered.

The endangered Indiana bat (*Myotis sodalis*) is known to occur in several Illinois counties, but we are unaware of any record for Whiteside or Rock Island Counties. Potential habitat for this species occurs statewide, therefore, Indiana bats are considered to potentially occur in any area with forested habitat.

Indiana bats migrate seasonally between winter hibernacula and summer roosting habitats. Winter hibernacula include caves and abandoned mines. Females form nursery colonies under the loose bark of trees (dead or alive) and/or cavities, where each female gives birth to a single young in June or early July. A single colony may utilize a number of roost trees during the summer, typically a primary roost tree and several alternates. The species or size of tree does not appear to influence whether Indiana bats utilize a tree for roosting provided the appropriate bark structure is present.

During the summer, the Indiana bat frequents the corridors of small streams with riparian woods as well as mature upland forests. It forages for insects along stream corridors, within the canopy of floodplain and upland forests, over clearings with early successional vegetation (old fields), along the borders of croplands, along wooded fencerows, over farm ponds, and in pastures.

Suitable summer habitat in Illinois is considered to have the following characteristics within a ½ mile radius of a project site:

- 1) forest cover of 15% or greater;

- 2) permanent water;
- 3) one or more of the following tree species: shagbark and shellbark hickory that may be dead or alive, and dead bitternut hickory, American elm, slippery elm, eastern cottonwood, silver maple, white oak, red oak, post oak, and shingle oak with slabs or plates of loose bark;
- 4) potential roost trees with 10% or more peeling or loose bark

If the project site contains any habitat that fits the above description, it may be necessary to conduct a survey to determine whether the bat is present. In addition, search for this species should be made prior to any cave-impacting activities. If habitat is present or Indiana bats are known to be present, they must not be harmed, harassed, or disturbed when present, and this field office should be contacted for further assistance.

The threatened bald eagle (*Haliaeetus leucocephalus*) is listed as wintering in Whiteside and Rock Island Counties. During the winter, this species feeds on fish in the open water areas created by dam tailwaters, the warm water effluents of power plants, and municipal and industrial discharges, or in power plant cooling ponds. The more severe the winter, the greater the ice coverage and the more concentrated the eagles become. They roost at night in groups in large trees adjacent to the river in areas that are protected from the harsh winter elements. They perch in large shoreline trees to rest or feed on fish. There is no critical habitat designated for this species. The eagle may not be harassed, harmed, or disturbed when present nor may nest trees be cleared.

The endangered Higgins eye pearlymussel (*Lampsilis higginsii*) is listed for the Mississippi River north of Lock and Dam 20 which includes Jo Daviess, Henderson, and Rock Island Counties, Illinois and Allamakee, Clayton, Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, and Scott Counties, Iowa. In addition, it is known from the Rock River downstream of the Steel Dam, Rock Island County, Illinois. Potentially, it may also occur in Adams, Carroll, Hancock, Pike and Whiteside Counties, Illinois upstream of Lock and Dam 22 on the Mississippi River. This species prefers sand/gravel substrates with a swift current and is most often found in the main channel border or an open, flowing side channel.

While there is no designated critical habitat, the Higgins eye Recovery Team has designated habitats essential to the recovery of the species. These areas include Allamakee County, Iowa (river miles 655.8-658.4R); Harper's Slough area, Allamakee County, Iowa (river mile 639-641.4R); Marquette-McGregor area, Clayton County, Iowa (river mile 634-636); McMillan Island area, Clayton County, Iowa (river mile 616.4-619.1R); Cordova, Rock Island County, Illinois (river mile 503-505.5L); and Sylvan Slough, Rock Island, Illinois (river mile 485.5-486L).

The State of Illinois has also designated certain mussel refuge areas that contain this species. Their regulations would affect the commercial harvest of mussels on these refuges. If project is located near a known Higgins eye mussel bed, it may be necessary to conduct a survey to determine the presence of the species.

The project lies within the range of the freshwater sheepnose (*Plethobasus cyphus*) and spectaclecase (*Cumberlandia monodonta*) mussels that are declining throughout their national range and are currently Federal Candidate species. Significant declines relative to their historical distribution and their small isolated remaining populations continue to be threatened due to habitat loss and degradation. We encourage early project coordination to avoid potential impacts to this mussel and its habitat.

The Federal candidate spectaclecase mussel is primarily a large river species occurring most often in riverine microhabitats sheltered from main currents. Substrates include mud to boulders in shallow riffles and shoals with slow to swift currents. Occurrences tend to be aggregated especially under slabs and bedrock shelves protected from the current. The spectaclecase mussel seldom moves and when found in streams, occurs mainly in flow refuges with little sediment turbidity.

The sheepnose mussel is primarily a larger-stream species occurring mainly in shallow shoal habitats with moderate to swift currents over coarse sand and gravel but includes mud, cobble, and boulders as well. This includes larger rivers with deep runs, while those specimens found in streams occur mainly in stable flow refuges with little sediment turbidity.

At a minimum, project evaluations should contain delineations of whether or not sheepnose mussel habitat occurs within project boundaries. In cases where the species is known to occur or potential habitat is rated moderate to high, surveys may be necessary. Please contact this office for further information should this species or their habitat be suspected.