

**Surface Transportation Board Finds No Basis for Modifying Environmental Measures Taken by Local Authorities to Protect Aquifer in Hauler, ID Near Planned "Burlington Northern" Refueling Facility**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision denying a petition asking the agency to conduct an environmental review of a proposal by The Burlington Northern and Santa Fe Railway Company (BNSF) to construct a refueling terminal in the Hauler, Idaho area over a portion of the Spokane Valley-Rathdrum Prairie Aquifer.

Congress has long provided that state and local railroad regulation is preempted to a significant extent, that is, that federal rather than state or local law applies to railroad construction and other activities. Congress broadened the preemption provision of the law [Section 10501(b) of Title 49, United States Code (49 U.S.C. 10501(b))] in the Staggers Rail Act of 1980, and further in the ICC Termination Act of 1995 (ICCTA) to such an extent that the courts have found most state and local regulation of transportation and transportation facilities to be preempted even if new Board-regulated construction is not involved. Nevertheless, the Board encourages cooperation among carriers and state and local agencies to address issues that arise when new facilities are constructed.

In this case, BNSF worked with the Kootenai County Board of Commissioners (County), which, after imposing several environmental conditions to which BNSF agreed, issued a permit for the construction. The County determined that "[t]he levels of containment, leak detection, emergency shut off programs, engineering above and beyond present requirements, including earthquake requirements, and the training programs for the employees make this a very safe facility and significantly reduce any risk to the aquifer."

Some of the local interests were not satisfied with the conditions that the County imposed, so they went to court, arguing that only the Board could impose conditions here. In *Flynn v. Burlington Northern Santa Fe Corp.*, 98 F. Supp.2d 1186 (E.D. Wash. 2000), the court held that, if the Board found that this case involved construction of a line of railroad under the provisions of Section 10901 of Title 49, U.S. Code, then the agency would have the regulatory authority to conduct an environmental review and impose environmental conditions under the National Environmental Policy Act. The petitioners thus filed their request for a declaratory order with the Board.

In its decision, the Board determined that the Hauler project did not fall within Section 10901 because it would not allow BNSF to serve new territory, but simply would help the carrier with its existing operations. Therefore, relying on well-settled court and agency precedent, the Board found that it had no regulatory authority over the project and accordingly could not impose environmental conditions beyond those already agreed to by BASF and the County.

The Board issued its decision today in *Friends of the Aquifer, City of Hauser, Id, Hauser Lake Water District, Cheryl L. Rodgers, Clay Larkin, Kootenai Environmental Alliance, Railroad and Clearcuts Campaign*, STB Finance Docket No. 33966. A printed copy of the decision is available for a fee by contacting **D~2D~ Legal, Room 405, 1925 K Street, NW, Washington, DC 2006, telephone (202) 293-7776** or via [http://Da\\_To\\_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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