

SERVICE DATE – MAY 13, 2022

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 391 (Sub-No. 11X)

**Red River Valley and Western Railroad Company
–Abandonment Exemption –
In Cass County, N.D.**

BACKGROUND

In this proceeding, Red River Valley & Western Railroad Company (RRVW), filed a notice of exemption seeking exemption under 49 U.S.C. § 1152.50 from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of an approximately 2.29-mile rail line extending from milepost 9.36 to milepost 11.65 (the Line) in Cass County, North Dakota. A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). RRVW and Burlington Northern Railroad Company (BNSF) entered a contract in 1987 whereby RRVW leased the tracks, physical assets, and common carrier obligation for the Line with an option for purchase in 2027. Until then, BNSF retains the real estate underlying the Line. If the notice becomes effective, RRVW would be able to salvage track, ties and other railroad appurtenances, and BNSF would be able to sell the Line's underlying real estate.

DESCRIPTION OF THE LINE

RRVW is filing for abandonment authority at the request of the Metro Flood Diversion Authority (MFDA) to accommodate the construction of the Fargo-Moorhead Area Diversion Project at approximate milepost 11. The Fargo-Moorhead Area Diversion Project area encompasses the area containing the Line, and is a component of a 30-mile project developed by the U.S. Army Corps of Engineers and MFDA to protect adjacent metro areas in North Dakota and Minnesota during times of extreme flooding. The project has received funding from both the federal government and local sponsors.

RRVW indicates that the right-of-way is 100 to 200 feet wide, and aerial digital images show that the topography is relatively flat. The line currently includes six public road crossings, one private road crossing, and across one bridge. The Line traverses United States Zip Code 58047.

ENVIRONMENTAL REVIEW

RRVW submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including abandonment-related salvage activities. RRVW provided the E&H Report to several appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental Policy Act (NEPA). The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding. Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts.

Diversion of Traffic

No impacts on traffic are anticipated. CHS Dakota Plains Ag (CHS) had been the sole shipper served by RRVW over the segment proposed for abandonment for the past decade. CHS received its last shipment on March 25, 2020, and is in the process of relocating operations from Horace, N.D. to Kindred, N.D. CHS has provided written support for the proposed abandonment to accommodate the FMDA flood control project. In addition, the proposed abandonment would result in the elimination of six public road crossings and one private crossing resulting in a safer environment for vehicular traffic.

Salvage Activities

Salvage and disposal of a rail line would consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed would remain as is, and existing drainage systems would remain intact. When the rail and track material is removed, the contractor would retain the existing level roadbed surface. No ballast would be removed, and no soil disturbance would occur. Following abandonment, the Line's rail and related track material would be salvaged.

RRVW notified the North Dakota Public Service Commission (PCS) by letter dated March 29, 2022, requesting comments and included a copy of the preliminary E&H Report. PSC provided a response via letter on April 22, 2022. PSC would require further consultation to ensure compliance with North Dakota Century Codes related to sale or transfer of the real property and proposed salvage activities. Accordingly, OEA is recommending that RRVW consult with PSC regarding any potential compliance requirements.

¹ The E&H Report is available for viewing on the Board's website at <https://www.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "391" "11" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on April 20, 2022.

Land Use

RRVW believes that the proposed abandonment is consistent with, and would promote, existing land use plans. The land adjoining the Line consists of a combination of residential and commercial areas. By letters dated March 22, 2022, copies of the E&H Report have been mailed to NRCS, and the appropriate local and state contacts, including to representatives of Cass County, ND, and the City of Horace, ND for their information and comment. Because of the Line's relationship to the proposed flood control project, RRVW believes that the Line is not suitable for public use or railbanking.

Hazardous Materials/Spills and Safety

RRVW stated the proposed abandonment would have no detrimental effects on public health and safety. RRVW does not intend to disturb a subgrade or subgrade structures. The proposed abandonment would not affect the transportation of hazardous materials.

The North Dakota Department of Environmental Quality (NDDEQ) provided a response via email on March 30, 2022, indicating that there was a release of liquid nitrogen fertilizer at MP 9.36 in March of 1976, prior to operations by RRVW. NDDEQ would require proper characterization and disposal of nitrogen-impacted soils, if found during salvage activities. However, because RRVW proposes to leave the railbed in place, including the ballast, soil disturbing activities (including any soils that could contain elevated levels of nitrogen) are not anticipated with the proposed abandonment.

As a result of the finding by NDDEQ, CHS provided a letter from the North Dakota Department of Health (ND DOH) dated May 11, 2011. The N D DOH confirmed that the contamination site was capped to prevent precipitation infiltration and potential contaminant migration from the nitrogen fertilizer spill. The N D DOH determined that no further investigation or remedial action would be required at this time. CHS remains financially responsible for any future issues related to the spill.

Biological Resources

RRVW stated that the proposed abandonment would not adversely affect endangered or threatened species or areas designated as critical habitat. RRVW has notified the U.S. Fish and Wildlife Service (USFWS) and the North Dakota Game & Fish Department of the proposed abandonment by letters dated March 22, 2022, requesting assistance in determining whether the proposed abandonment would adversely affect endangered or threatened species or areas designated as critical habitat; RRVW included a copy of the preliminary E&H Report with its request. The North Dakota Ecological Services Field Office and the Minnesota-Wisconsin Ecological Services Field Office sent OEA a species list dated May 11, 2022 that was generated from the USFWS IPAC system.

The Northern Log-eared Bat, and two insect species, the Dakota Skipper and the Monarch Butterfly, may be present in the project area, but there are no critical habitats. Additionally, twelve migratory bird species were identified.² OEA has determined that these federally listed species would not be affected by the proposed abandonment because none of the species would nest/hibernate or find food sources within the railroad right-of-way, and RRVW has indicated that salvage would be of limited scope. OEA is providing USFWS North Dakota Ecological Services Field Office and the Minnesota-Wisconsin Ecological Services Field Office a copy of this Draft EA for review.

RRVW notified the National Park Service (NPS) of the proposed abandonment by letter dated March 22, 2022, requesting assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests and included a copy of the preliminary E&H Report. NPS had not provided comments at the time this Draft EA was prepared.

Water Resources

The Line is not located within a coastal zone. Therefore, no further consultation is required.

RRVW has no plans to undertake in-stream work or dredge and/or fill in connection with the proposed abandonment. The railroad does not intend to appreciably remove or alter the contour of the roadbed underlying the rail line, and disturbed areas would be limited to the right-of-way wherever possible. However, the line passes through 100-year floodplains. Accordingly, OEA has included the appropriate offices of the U.S. Army Corps of Engineers and the Federal Emergency Management Agency on the service list for this proceeding to ensure that they receive a copy of this Draft EA for review.

Air Quality and Noise

OEA believes that any air emissions associated with the limited salvage activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to salvage operations would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

OEA is providing a copy of this Draft EA to all parties on the Service List, and the following resource agencies: Regional EPA; North Dakota Department of Environmental Quality; U.S. FWS North Dakota Field Office; U.S Corps of Engineers–Saint Paul District; and FEMA Region 8.

² U.S. Fish and Wildlife Service, IPaC Information for Planning and Consultation Tool, <https://ecos.fws.gov> (last accessed May 11, 2022), Project Code: 2022-0040459.

HISTORIC REVIEW

Based on research by RRVW, the Line was originally constructed in 1881 by the Fargo & Southwestern Railroad. The Line was subsequently deeded to the Northern Pacific Railway Company in 1898. On March 2, 1970, the Great Northern Railway Company, Northern Pacific Railway, the Pacific Coast R.R. Company and the Chicago, Burlington Lines, Inc. merged to form what was known as the Burlington Northern Railroad, now the BNSF Railway Company. The Line was included in the purchase of a portion of the Burlington Northern Railroad by the Red River Valley & Western Railroad Company in 1987.

Track work and/or construction occurred regularly over the many years that the Line was in operation, and may have affected the potential for recovery of archeological resources. The bridge at MP 11.1 was constructed in 1965 to cross the Sheyenne River. RRVW does not believe the bridge has unique or otherwise significant design characteristics.

RRVW submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the State Historical Society of North Dakota (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).³ OEA has not heard from the State Historic Preservation Officer (SHPO) and therefore has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, OEA is recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

Guidance regarding the Board's historic preservation review process is available on the Board's website at [www. https://www.stb.gov/resources/environmental/historic-preservation-overview](https://www.stb.gov/resources/environmental/historic-preservation-overview).

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁴

³ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overseeing historic preservation at <https://stb.gov/resources/environmental/historic-preservation-overview>.

⁴ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed May 9, 2022).

The database indicated that there are nine federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment.

Accordingly, OEA is providing a copy of this Draft EA for review and comment to the following tribes: Apache Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Leech Lake Band of the Minnesota Chippewa Tribe; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota.

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority.⁵

- 1) Red River Valley & Western Railroad Company (RRVW) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. RRVW shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the State Historic Preservation Office, Tribal Historic Preservation Office (if on tribal lands), and any other Section 106 consulting parties that have been identified and the public. RRVW may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
- 2) Prior to the commencement of any abandonment-related salvage activities, Red River Valley & Western Railroad Company shall consult with the North Dakota Public Service Commission to determine any compliance requirements related to the potential sale or transfer of the real property and the extent of salvage.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line

⁵ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with this condition would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

⁶ Board decisions are available for viewing on the Board's website at <https://stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "391" "11" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁷ Id.

COMMENTS

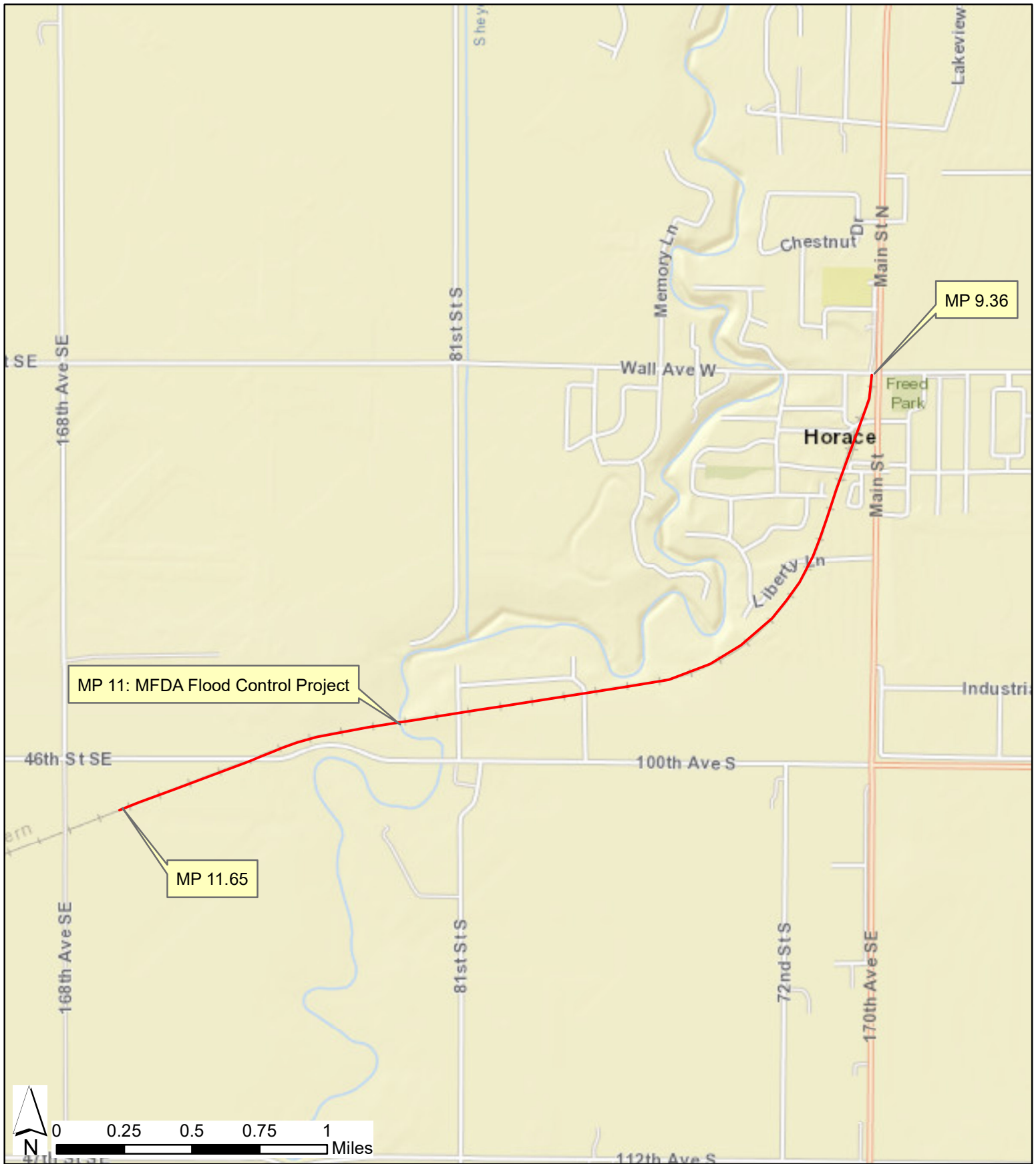
As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Andrea E. Poole by email at Andrea.Poole@stb.gov or by phone at 202-245-0305.

Date made available to the public: May 13, 2022.

Comment due date: May 26, 2022.

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

Attachment

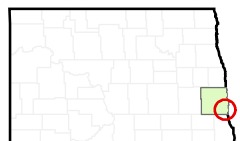


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Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.

Legend

— The Line



North Dakota