



IDAHO
CONSERVATION
LEAGUE

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March 7, 2018

U.S. Army Corps of Engineers
U.S. Coast Guard
U.S. Environmental Protection Agency
Idaho Department of Lands
Idaho Department of Environmental Quality

RE: BNSF Application for Sandpoint Junction Connector

Dear Agency Representatives:

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting our clean water, clean air, special places and quality of life.

On behalf of the Idaho Conservation League, please accept my request for a comment period extension and public hearings regarding BNSF's permit application for the Sandpoint Junction Connector Project.

Thank you for your consideration of this request. If you have any questions, please contact me at (208) 265-9565 or at mnykiel@idahoconservation.org.

Sincerely,

Matthew Nykiel
Conservation Associate

Introduction

On February 26, 2018, the U.S. Army Corps of Engineers (ACOE) issued a public notice that BNSF Railway (BNSF) submitted an application for a Department of Army permit for work in Waters of the United States (33 U.S.C. 1344) and an application requesting approval from the Thirteenth Coast Guard District (USCG) for construction of new bridges over navigable waterways of the United States (33 U.S.C. 525 et seq.). These submittals relate to BNSF's Sandpoint Junction Connector proposal to construct a series of new railroad bridges and associated infrastructure to accommodate a second railroad track across Lake Pend Oreille. In addition, BNSF also submitted related applications for permit approval of this proposal from the Idaho Department of Lands (IDL) and the Idaho Department of Environmental Quality (IDEQ).

Both the probable impacts and substantial public interest associated with BNSF's proposal merit an extension to the public comment period and the scheduling of public hearings. Specifically, Bonner County would likely experience a wide range of significant direct, indirect, and cumulative impacts associated with this proposal. So too, could the Pacific Northwest region, through which BNSF's rail line also travels, anticipate significant indirect and cumulative impacts from this proposal. Moreover, public concern regarding activities affecting rail infrastructure, traffic, and safety has been acute in Bonner County over the past 5 years, as the County, its municipalities, and its residents have passed resolutions and submitted comments directly related to similar proposals likely to increase the transport of volatile substances by rail through north Idaho.¹

Based on the probable impacts and public interest in BNSF's proposal, along with the more detailed basis we provide below, we respectfully request the ACOE, USCG, IDL, and IDEQ:

1. Extend their respective public comment periods for BNSF's Sandpoint Junction Connector Proposal by 120 days from the date of public notice (February 26, 2018); and
2. Provide at least (3) public hearings, according to the following requested parameters:
 - a. All hearings should be scheduled to begin no earlier than 5 p.m. PST;
 - b. A minimum of one hearing should occur in each of the following months – April, May, and June;
 - c. At least one hearing should occur during the development of the Environmental Assessment (EA) or Environmental Impact Statement (EIS) and at least one public hearing should occur after the EA or EIS is publicly released;
 - d. A minimum of three public hearings should occur in the City of Sandpoint; and
 - e. A representative from each of the permitting agencies and BNSF should be present and respond to questions raised by the public at each public hearing.²

¹ See Attachment A.

² Given the complex permitting process related to BNSF's proposal, we recommend the permitting agencies coordinate together on extending the comment period and scheduling public hearings. Extending the comment period in unison would facilitate better coordination and perhaps allow the agencies to agree on three or more public hearing dates, where a representative from each agency could be available to accept comment and answer questions regarding each agency's particular permitting evaluation.

Legal Standard

The legal standards applicable to determining comment period and public hearing procedure include the following:

U.S. Army Corps of Engineers

As the ACOE evaluates whether to grant or deny BNSF's application for a Section 404 permit under the Clean Water Act (33 U.S.C. 1344), the Regional Administrator (RA) must provide a comment period of not less than 30 or more than 60 days following the date of public notice. 40 CFR 231.4(a). However, the Administrator or RA may, upon a showing of good cause, extend the time requirements in these regulations. 40 CFR 231.8.

In addition, the Regional Administrator must hold a public hearing, if the RA finds a significant degree of public interest in the ACOE's decision in this case or if it would otherwise be in the public interest to hold a hearing. 40 CFR 231.4(b). The RA must also hold a public hearing if an affected landowner or permit applicant or holder requests a hearing. *Id.*

U.S. Coast Guard

As the USCG evaluates whether or not to issue a bridge permit to BNSF under the General Bridge Act of 1946 (33 U.S.C. 525 et seq.), the USCG must hold public meetings when there are substantial issues concerning the effect that the proposed bridge will have on the reasonable needs of navigation. 33 CFR 115.60(b)(1).

Idaho Department of Lands

As IDL evaluates whether or not to issue an encroachment permit to BNSF under the Lake Protection Act (Title 58, Chapter 13 et seq, Idaho Code), IDL must hold a public hearing, if a hearing is requested. Idaho Code 58-1306(c).

Idaho Department of Environmental Quality

As IDEQ evaluates whether to grant, deny, or waive BNSF's application for a Section 401 Certification from the State of Idaho according to Section 401 of the Clean Water Act (33 U.S.C. 1341), the federal permitting agency (the ACOE, in this case) may set the certification response time limit to any "reasonable period of time (which shall not exceed one year)." 33 U.S.C. 1341(a)(1). In addition, IDEQ must open its draft 401 certification to public comment for at least 21 days. Idaho Section 401 Certification Guidance at 8.³

³ Idaho Section 401 Certification Guidance (*available at* <http://www.deq.idaho.gov/media/516305-401-certification-guidance-0912.pdf>).

As the Detailed Basis of Request shows below, there is both good cause for extending the comment period and significant public interest in BNSF's proposal and BNSF's applications for associated permits that warrant, if not require, an extension to the comment period and public hearings.

Furthermore, there is no applicable regulatory or statutory provision limiting the comment period-setting authority of any of the federal or state agencies listed above, besides the Clean Water Act provision, which allows the ACOE to set the Section 401 response time to no longer than one year. The applicable regulations and statutes also do not limit the number of public hearings that may be set by any of the federal or state agencies listed above. In other words, each one of the permitting agencies in this case has the authority to grant our request.

Therefore, according to the basis of our request provided below, the ACOE, USCG, IDL, and IDEQ are authorized to extend the public comment period for BNSF's Sandpoint Junction Connector proposal and schedule related public hearings per the specifics of our request.

Detailed Basis of Request

Project Complexity

BNSF projects that development of the Sandpoint Junction Connector will cost at least \$108 million and construction will last 3 to 3.5 years. Given the enormity of such a project, BNSF submitted a Joint Application for Permits that is over 250 pages long, not including associated attachments and other submittals. Accordingly, 30 days is not a sufficient length of time to allow the public, its elected representatives, and emergency responders to fully analyze, evaluate, and comment on how this proposal could affect the protection and utilization of important natural resources.

Community Demographics

The population of Bonner County and the City of Sandpoint is roughly 42,000 and 8,000, respectively. However, hundreds of residents do not reside in the County and City year-round, in addition to the thousands of tourists that visit every year intermittently, many with an interest in Lake Pend Oreille.⁴

Every member of our community deserves a reasonable opportunity to fully review BNSF's proposal, whether they reside here in the summer or the entire year. And, each community member deserves an opportunity to attend a public hearing, where the permitting agencies and BNSF are available to take comment and answer public concerns. Due to the seasonal nature of our community, we believe extending the public comment period by 120 days from the date of the public notice and scheduling a minimum of three public hearings (one in April, May, and June) is reasonable and appropriate.

⁴ Bonner County Workforce Trends, January 2018, Idaho Department of Labor (*available at* <https://labor.idaho.gov/publications/lmi/pubs/BonnerProfile.pdf>).

Local Vulnerabilities

Rail activity and infrastructure already pose significant risks to our community, as recognized in the most recent 2017 Geographic Response Plan.⁵ That document, authored in coordination with multiple state and local agencies, identified several vulnerabilities in the region's capacity to respond to an oil train derailment, including:

1. Between mid-October and mid-May, most boat ramps around Lake Pend Oreille are unusable because of low lake elevation, severely restricting hazardous material spill response. The only two boat ramps that are reliably suitable for year-round response deployment are located at Priest River and Hope Basin, roughly 22 miles and 10.45 miles, respectively, away from the north end of BNSF's existing bridge across Lake Pend Oreille; and
2. The seven primary fire districts in this area are largely staffed by volunteers, but most of the volunteers have not yet received boom deployment training, limiting the region's capacity to respond to a hazardous material or oil spill near the bridge proposal.⁶

The 2017 Geographic Response Plan also identified the present state of hazardous material transport by rail through Bonner County, which raises concerns, especially given the community's vulnerabilities, including:

1. At least three significant derailments occurred in Bonner and Boundary Counties near waterways in the spring of 2017;⁷
2. Between 1995 and 2014, the Federal Rail Administration reported 37 unique accidents in Bonner County;
3. Currently, approximately 24 unit trains per week carrying crude oil travel through Sandpoint; and
4. The three railroads that operate through Sandpoint move significantly more than 300,000 rail cars or tank cars containing various forms of hazardous materials and crude oil.⁸

In addition, data obtained by the Associated Press in 2017 show government inspectors found nearly 24,000 defects on rail lines used to haul crude oil throughout the country.⁹

Given these challenges, we request that before granting BNSF permission to add rail infrastructure to an area already lacking sufficient resources to respond to an oil train derailment, these agencies grant a 120-day extension to the public comment period and schedule at least 3 public hearings, so that our emergency response agencies and departments can adequately evaluate the potential impacts of BNSF's proposal on emergency response and cleanup.

⁵ See Lake Pend Oreille and Pend Oreille River Geographic Response Plan, Northwest Area Committee 2017 (available at <https://evogov.s3.amazonaws.com/media/136/media/60622.pdf>).

⁶ See Lake Pend Oreille and Pend Oreille River Geographic Response Plan.

⁷ See Attachment B.

⁸ See Lake Pend Oreille and Pend Oreille River Geographic Response Plan.

⁹ Brown, Matthew, "Thousands of defects found on oil train routes," *The Spokesman-Review*, Apr. 5, 2017 (available at <http://www.spokesman.com/stories/2017/apr/05/thousands-of-defects-found-on-oil-train-routes/>).

Agency Analysis of BNSF Proposal and Public Comment

BNSF's Sandpoint Junction Connector proposal is associated with a wide range of probable direct, indirect, and cumulative impacts that warrant significant public review. Realistically, adequate public review demands the comment period extension and public hearings we have requested.

The ACOE appears to be the lead agency preparing the National Environmental Policy Act review of BNSF's proposal, while the USCG is the lead agency conducting review of the proposal according to the National Historic Preservation Act and the Endangered Species Act. These agencies have not yet completed or publicly released the final review documents required by the laws mentioned above, so any new information concerning the potential impacts of BNSF's proposal brought to light by these reviews may not be publicly available within the current 30-day public comment period.

As such, we request the public comment period be extended to allow the public to comment on and inform the development of these review documents, as well as allow the public an opportunity to submit comments on the proposal after these review documents are finalized and released. Likewise, public hearings should be scheduled so that at least one hearing occurs during the agency development of the review documents and at least one hearing occurs after the review documents are publicly released.

To convey the extent of impacts that will be reviewed under such laws as NEPA, NHPA, and ESA and the importance of providing the public an opportunity to inform the development of these reviews and learn from the final review documents, we summarized below some of the most relevant and concerning impacts the BNSF proposal would present to Bonner County and the region.

Scope of Impacts

Adding an entire new rail line impacts a community and region in many ways and over time. For example, just the projected 3- to 3.5-year construction period of the rail line may create logistical impediments and inconveniences in the City and County, due to construction traffic, construction noise, restrictions to car and boat traffic, and more. The on-the-water construction operations and infrastructure may also impede or reduce County or City emergency responders' ability to effectively navigate the waters of Lake Pend Oreille, in order to respond to a train derailment or spill should one occur during the construction period.

Beyond the construction time period, an additional rail line will also facilitate and promote an increase in rail traffic through the region. BNSF currently anticipates rail traffic on this line to nearly double by 2035.¹⁰ Increasing train traffic will result in its own impacts in the City,

¹⁰ Edelen, Amy, "BNSF to double track on line linking Spokane Valley to Hauser, Idaho," *The Spokesman-Review*, Feb. 26, 2018 (available at <http://www.spokesman.com/stories/2018/feb/26/bnsf-to-double-track-on-line-linking-spokane-valle/>).

County, and region, including traffic delays, noise pollution, water pollution,¹¹ increased derailment risk, among other impacts. Some of these impacts are expected to affect the local economy and emergency response.

In 2015, the City of Sandpoint analyzed the impacts of increased rail traffic on the local economy. Even with conservative forecasts of future rail traffic, Sandpoint can expect six hours of traffic delays every day and annual economic losses of \$575,000 by 2020, according to the city's analysis.¹²

Those traffic delays will impact emergency services, forcing the city to consider costly solutions such as a separated grade crossing, a new fire station or monitoring devices to tell emergency service providers when a crossing is blocked. By some estimates, these improvements would cost the city well into the millions of dollars.

BNSF's existing rail bridge across Lake Pend Oreille took its present form in 1905. Therefore, it is reasonable to presume BNSF's proposed rail bridge will last at least 113 years and likely many decades more. As a result, the impacts of this proposal to the City of Sandpoint, Bonner County, and the Pacific Northwest region will also be long-lasting and essentially permanent. Indeed these impacts will burden not only the people who reside in this area now but also the generations of people who will grow up or move to this area over the next 150 years. And, there is no doubt the impacts associated with BNSF's proposal would be extensive over this time. The wide range of impacts along with the long timescale over which these impacts will be experienced merits the comment period extension and public hearing we request below.

Request

According to the basis provided above, we respectfully request the ACOE, USCG, IDL, and IDEQ:

1. Extend their respective public comment periods for BNSF's Sandpoint Junction Connector Proposal by 120 days from the date of public notice (February 26, 2018); and
2. Provide at least (3) public hearings, according to the following requested parameters:
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 - d. A minimum of three public hearings should occur in the City of Sandpoint; and
 - e. A representative from each of the permitting agencies and BNSF should be present and respond to questions raised by the public at each public hearing.

¹¹ A BNSF study found that each rail car carrying coal loses on average 500 to 2000 pounds of coal dust or 30 to 120 tons of coal dust per 120-car train. BNSF Railway Inc. Vice President Gregory Fox's testimony before the Surface Transportation Board (STB), Arkansas Electric Cooperative Petition for Declaratory Order, FD 35305, July 29, 2010, at 42:8-13 (*available at* <https://www.stb.gov/TransAndStatements.nsf/8740c718e33d774e85256dd500572ae5/9e49ebf2fea431f1852578460066c5cb?OpenDocument>).

¹² See *Economic Impact of Increased Rail Traffic through Sandpoint, Idaho*, City of Sandpoint, January 2015.

Certificate of Service

Idaho Conservation League delivered its Request for Comment Period Extension and Hearings re BNSF Sandpoint Junction Connector to the following persons via electronic mail:

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