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March 9, 2015

David Studenski  
Regulatory Branch, St. Paul District  
United States Army Corps of Engineers  
180 Fifth Street East, Suite 700  
St. Paul, MN 55101-1678

**Re: BNSF Railway Application for 404 Permit, Reference No. 2013-04758-DAS**

Dear Mr. Studenski:

I am writing to you on behalf of Wisconsin and Minnesota residents Maureen Freedland, Karen Ringstrom, Guy A. Wolf, Alan Stankevitz, Thomas Claflin, Ralph Knudson, Richard L. Pein, Marina Dvorak, and Carolyn Mahlum-Jenkins (Petitioners). Petitioners previously expressed concerns about potential environmental impacts of the Burlington Northern Santa Fe Railroad (BNSF) request for a 404 permit to construct a second railroad track in the City of La Crosse, Wisconsin. This track will cross through the La Crosse River Marsh and the La Crosse River, and is in or adjacent to the City of La Crosse, residential neighborhoods, and the Mississippi River. Petitioners' concerns include direct impacts from the construction of the second track as well as indirect and cumulative impacts from past wetland fill, disturbance to wildlife and the environment, as well as the public safety hazard posed by more trains passing through this area.

Petitioners and others have requested that the U.S. Army Corps of Engineers (Corps) prepare an Environmental Impact Statement (EIS) that includes cumulative and indirect effects to ensure proper disclosure and analysis of the impacts of BNSF's request. Because this is just one of many projects in the region to expand rail infrastructure, Petitioners have also requested a regional-scale EIS to analyze the cumulative impacts of increased rail traffic more broadly.

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Petitioners made the same request to the Wisconsin Department of Natural Resources (DNR) before it issued a wetland and bridge permit for the BNSF project. The DNR declined to prepare an EIS and issued the permit to BNSF. The Petitioners are challenging the DNR decision to issue the wetland and bridge permit to BNSF on the basis that the DNR did not prepare an adequate environmental analysis prior to issuing the permit, and thus did not comply with the Wisconsin Environmental Policy Act (WEPA). WEPA is the Wisconsin state law requiring agencies to consider and disclose environmental effects related to a proposed action, and it is patterned after the National Environmental Policy Act (NEPA).

Given that the Wisconsin permit for the BNSF project is now going to be under administrative or judicial review, the Petitioners request that the Corps refrain from issuing a 404 permit to BNSF until this review is complete. As a result of the challenge, the agency or the court may modify or reverse the BNSF state permit. A project authorized by a 404 permit may not proceed without a valid state water quality certification, and as such it would be prudent for the Corps to wait to issue the BNSF permit until the court or agency remedies any errors in the state BNSF permit.

Further, the Corps must not issue a permit to BNSF without an adequate environmental analysis that complies with NEPA. As the Petitioners explain in the attached Petition for Judicial Review of the state permit, the state permitting process did not include an environmental analysis that complies with WEPA. In addition to the environmental impacts highlighted in the attached Petition, as well as those raised in comments to the Corps on the proposed 404 permit, the Petitioners provide the following non-exhaustive list of environmental impacts that the Corps must consider before issuing the BNSF permit:

- The adequacy of the current criteria for flood impacts based on the historic 100-year flood to address flooding risk given documented increases in precipitation and other weather changes;
- A hydraulic analysis of the impact on flood levels from both the bridge construction and the wetland fill in the marsh that will reduce flood storage capacity;
- The risk of environmental harm and threat to public safety from a train derailment carrying hazardous materials such as crude oil, including the ability to respond to and clean up spills from a train derailment in the La Crosse River Marsh or the La Crosse River, including at different times of year and all potential hazardous materials that are transported by rail, and BNSF's ability to pay for a the cleanup;
- The potential impact of a train accident or hazardous material spill on river navigation through the La Crosse or Mississippi Rivers;
- The disturbance and potential impacts to wildlife that reside in or use the La Crosse River Marsh and Upper Mississippi River National Wildlife Refuge—including but not limited to endangered and special concern species such as the bald eagle and black tern, and migratory birds—from more and more frequent trains passing through;
- The disturbance to a documented bald eagle's nest within 600 feet of the railroad tracks;

- The impact to nearby residents of increased noise, vibration, small incidental spills, and air pollution from more and more frequent trains passing through;
- The incremental impact of another wetland fill in the La Crosse River Marsh that has already been reduced to half its size from previous developments; and
- The impact on property values and tax revenue for the City of La Crosse.

Finally, the Petitioners submit the following mitigating conditions for inclusion in any Corps permit issued to BNSF. These conditions are warranted under the Corps obligation to issue a permit only if it is in the public interest and the Corps obligation to address environmental impacts pursuant to NEPA.

- Develop an emergency response plan, and obtain equipment and training for the local hazardous material handling team so that they are equipped to handle a train derailment in the La Crosse River Marsh or the La Crosse River;
- Use state-of-the-art rail technology to reduce noise and vibration impacts;
- Include appropriate conditions to ensure that construction activity and rail transport along the BNSF rail line does not disrupt the nesting activities of the black tern and bald eagle;
- Provide a speed limit through the City of La Crosse area that is appropriate for the tracks' proximity to sensitive environmental areas and residential areas;
- Prohibit trains from idling or stopping on the tracks through the La Crosse River Marsh;
- Conduct annual maintenance to rail bridges including the removal of any drift that accumulated during floods or high water periods in order to prevent exacerbating up-stream flooding; and
- Provide proof of insurance to cover estimated potential damage to the community and the environment from a train derailment and spill.

Thank you for your consideration of the Petitioners request. Please contact me if you have any questions.

Sincerely,

/s/

Sarah Williams  
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