

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of: )  
 )  
Encroachment Permit ) Case No.  
Application No. L-96-S-0096E ) PH-2018-PUB-20-001  
 )  
BNSF Railway Co., )  
Applicant. )  
\_\_\_\_\_ )

PUBLIC HEARING

PONDERAY, IDAHO

MAY 23, 2018

8:00 A.M.

HEARING COORDINATOR

CHRIS M. BROMLEY

REPORTED BY:

PATRICIA L. PULLO, CSR  
Notary Public

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P R O C E E D I N G S

TAKEN MAY 23, 2018, AT 8:00 A.M.

HEARING OFFICER BROMLEY: Good morning. We're on the record in the matter of encroachment permit application No. L-96-S-0096E. The applicant is the BNSF Railway Company. My name is Chris Bromley. I am a private attorney serving today as the hearing coordinator in this proceeding.

Today is Wednesday, May 23rd, 2018. We're located at the Ponderay Event Center, 401 Bonner Mall Way, Suite E, Ponderay, Idaho. And the time is shortly after 8:00 a.m.

This morning I am facilitating a hearing involving BNSF's application to construct a second train bridge adjacent to and west of the existing bridge across Lake Pend Oreille and Sand Creek. The Idaho Department of Lands is responsible for administering the Lake Protection Act, which if you're interested may be found at Idaho Code Section 58-1301 and Idaho Administrative Procedures Act 20.03.04.

Consistent with the Lake Protection Act and in order to build the second train bridge, BNSF must obtain an encroachment permit from the Department. My responsibility is to consider the application and the

1 written record, take public comment and determine  
2 whether or not the application meets Idaho's statutory,  
3 regulatory and case law standards for approving an  
4 encroachment. I am then tasked with issuing a  
5 preliminary order which will be reviewed by the director  
6 of the Department of Lands who will then issue a final  
7 order no more than 30 days after conclusion of the  
8 hearing.

9           While not part of the written record, I have  
10 reviewed BNSF's most recent encroachment permit numbered  
11 ERL-96-S-96D issued by the Department on June 1, 2009.  
12 As a record of the Department, I'm taking notice of this  
13 permit and incorporating this permit into the record by  
14 reference. A copy of this permit may be obtained from  
15 the Department of Lands.

16           While there may be other local, state and  
17 federal regulatory requirements for BNSF to address, the  
18 purpose of this hearing is to take comment regarding the  
19 application before me as to Idaho's Lake Protection Act  
20 and BNSF encroachment application filed with the  
21 Department of Lands.

22           Because this is a relatively larger hearing  
23 with many concerned interests, I would like to establish  
24 some ground rules. First, we are limited in the amount  
25 of time we can be here. We must leave this room no

1 later than 2:00 p.m. If you are unable to provide  
2 comment this morning and still wish to do so, please  
3 attend the second hearing which will start at 6:00 p.m.  
4 at the Sandpoint Middle School gymnasium with doors  
5 opening to the public at 5:30. Please be aware that the  
6 evening hearing must conclude no later than 11:00 p.m.

7           Second, to provide some predictability to the  
8 flow of the hearing and recognizing the limit in our  
9 time, I will first ask for comment from the United  
10 States Coast Guard and then from the United States Army  
11 Corps of Engineers. And I encourage the Guard and the  
12 Corps to limit their comments to no more than ten  
13 minutes.

14           Following comments from those agencies, I will  
15 take comment in this order: The applicant, BNSF, will  
16 provide an overview of the application and offer any  
17 comments it wishes to make. I encourage BNSF to limit  
18 those comments to no more than 15 minutes. After  
19 comments from BNSF, I will provide an opportunity for  
20 any public agencies other than the Idaho Department of  
21 Lands to provide comment. I encourage these public  
22 agencies to limit their comments to ten minutes each.  
23 After comments from those public agencies, I will  
24 provide an opportunity for the Department of Lands to  
25 provide comment. After comments from the Department of

1 Lands, I will provide an opportunity to the general  
2 public to provide comment.

3 I encourage each person from the public who  
4 wishes to comment to limit his or her comments to no  
5 more than ten minutes each. If you wish to comment and  
6 have not yet signed in, please do so. And you should  
7 have seen the sign-in tables when you walked in either  
8 of these doors. And I can only take comments from  
9 people who sign in.

10 If anyone here today chooses to provide  
11 written comments, those comments will be afforded the  
12 same weight as all verbal comments that I take today.  
13 So everyone is aware, I have reviewed all of the  
14 comments that have been submitted already to the  
15 Department, and those number in I think over a thousand  
16 at this point. After comments from the general public I  
17 will then provide BNSF with approximately 15 minutes to  
18 reply and make any closing remarks.

19 Because this is a public hearing in which I am  
20 taking comment, there will be no cross-examination or  
21 questioning by anyone present. It's just simply an  
22 opportunity to say what you want to say, not ask  
23 questions of people. That said, I may have questions  
24 and please don't be surprised if I do ask questions.  
25 It's because I'm interested in trying to probe into what

1 this application looks like.

2           For everyone who will be speaking, please know  
3 that this meeting is being recorded both by tape and  
4 also transcribed by our court reporter. So in order for  
5 the court reporter to establish a clear record you need  
6 to speak clearly and slowly enough so that she can type  
7 out the written word. If I think you're going too fast,  
8 I'll let you know that I think you need to slow down.  
9 And I may get a look from the court reporter that tells  
10 me to do so. It's not admonition against any of you.  
11 It's just that fingers can only move so fast, and we  
12 want to create a nice, clean record. That's one of my  
13 goals today.

14           The other thing with a court reporter, if  
15 you're not familiar, is using mm-hmm, mm-mm,  
16 (gesturing), pointing to things with hand gestures,  
17 those aren't transcribable and they're not clear. So I  
18 encourage you to use yes, no. If you're pointing to  
19 something, I would encourage you to describe what you're  
20 pointing to because when we go back through the record  
21 and are reviewing testimony and comment, it's impossible  
22 to know what you were pointing to. And it may have been  
23 something very profound for all we know. So we want to  
24 get everything down. And even if it seems redundant to  
25 describe what you're pointing to, I really would

1 encourage you to do so.

2 Anybody who's going to provide comment, when  
3 you come up here to the podium, please state and then  
4 spell your name. And that's another piece for our  
5 recorder to be able to transcribe your name accurately  
6 into the record. And then lastly, please remember to be  
7 respectful and courteous of everybody here. This  
8 hearing will be a great use of everyone's time if we all  
9 remember these ground rules.

10 So with that I will open the hearing to the  
11 Coast Guard and the Corps.

12 MS. SUGARMAN: Shelly Sugarman, S-h-e-l-l-y  
13 S-u-g-a-r-m-a-n.

14 Good morning, Mr. Hearing Officer. I am  
15 Shelly Sugarman, chief of bridge permitting and policy  
16 for the United States Coast Guard. I want to thank the  
17 Idaho Department of Lands for allowing the Coast Guard  
18 to participate in this public hearing.

19 Under the authority of Section 9 of the Rivers  
20 and Harbors Act of 1899 and the General Bridge Act of  
21 1946, the Coast Guard permits the location and plans of  
22 bridges and causeways across navigable waterways of the  
23 United States. We have jurisdiction over roughly 20,000  
24 bridges nationwide.

25 As part of our permit process we evaluate the

1 navigational and environmental impacts of each proposed  
2 project. The Coast Guard has jurisdiction over Lake  
3 Pend Oreille because it is a navigable waterway of the  
4 United States. We are presently reviewing the  
5 application from BNSF to add a second railroad bridge  
6 across Lake Pend Oreille and Sand Creek. In April we  
7 received a preliminary draft environmental assessment  
8 for review as part of BNSF's bridge permit application.  
9 The Coast Guard is the lead federal agency under the  
10 National Environmental Policy Act and all other federal  
11 environmental control laws for this project. The Corps  
12 of Engineers will be a cooperating agency for us.

13 To better inform our decision as to whether  
14 the environmental document should be an environmental  
15 assessment or an environmental impact statement, we have  
16 been reviewing the draft environmental assessment and  
17 all public comments submitted to the Corps of Engineers  
18 and the Idaho Department of Lands in response to their  
19 recent public notices. By early June we expect to  
20 decide whether the environmental document will be an  
21 environmental assessment or an environmental impact  
22 statement.

23 Once drafted, the environmental document will  
24 be made available for public review and comment through  
25 the Federal Register at [www.regulations.gov](http://www.regulations.gov). Comments



1 submitted through the regulations.gov website will be  
2 available for everyone to view. The Coast Guard will  
3 also hold one or more public meetings here in Idaho  
4 during the comment periods. We will also provide public  
5 notices via U.S. mail to announce that environmental  
6 documents are available for review and to provide public  
7 meeting details.

8 If you have any questions, I will be available  
9 throughout this hearing. Thank you very much.

10 HEARING OFFICER BROMLEY: Thank you.

11 MR. SLATE: Hello, Mr. Hearing Officer. My  
12 name is Shane Slate, S-h-a-n-e S-l-a-t-e. And I'm with  
13 the U.S. Army Corps of Engineers, Walla Walla District,  
14 Regulatory Division.

15 The Corps of Engineers is here to support the  
16 State's public process for Burlington Northern's  
17 proposed Sandpoint Connector Project. The Corps  
18 received an application for the project in February of  
19 2008 (sic) which we determined to be complete for the  
20 purposes of issuing our public notice for the project.  
21 The Corps released that public notice for the project on  
22 May 5th, 2018, for a 30-day comment period. After  
23 receiving multiple requests, the Corps decided to extend  
24 its public notice comment period for an additional 30  
25 days which concluded on April 30th of 2018.

1           The Corps is currently evaluating the project  
2 pursuant to our authorities under Section 404 of the  
3 Clean Water Act and Section 10 of the Rivers and Harbors  
4 Act associated with the proposed discharges of fill  
5 material into Lake Pend Oreille and Sand Creek at the  
6 north and south end of the two bridges and in wetland  
7 areas between the two proposed bridges. This is  
8 detailed in the Corps' March 5th, 2018, public notice,  
9 which I have a copy available if you would like it.

10           As a cooperating federal agency, the Corps  
11 intends to coordinate closely with the U.S. Coast Guard  
12 in its evaluation of the project under National  
13 Environmental Policy Act and its evaluations under  
14 Section 106 of the National Historic Preservation Act  
15 and Section 7 of the Endangered Species Act.

16           Mr. Hearing Officer, thank you for your time.  
17 And do you have any questions regarding, you know, the  
18 Corps' role and responsibilities for this project?

19           HEARING OFFICER BROMLEY: I do not. Thank  
20 you. Okay. So, BNSF.

21           MS. WALLACE: Thank you, Mr. Hearing Officer.  
22 My name is Courtney Wallace, C-o-u-r-t-n-e-y  
23 W-a-l-l-a-c-e, on behalf of BNSF. It's a pleasure to be  
24 here. Thank you for having us.

25           I am the regional director of public affairs

1 for our northwest division. And today myself and my  
2 colleague, Pierre, will be providing perspective on our  
3 Sandpoint Junction Connector Project. We do have a  
4 presentation and will make that available to the  
5 agencies.

6 Just a little bit about BNSF. We are a major  
7 railroad. We are owned by Berkshire Hathaway. We  
8 operate in 28 states and three Canadian provinces. At  
9 any given time we are running about 1800 freight trains  
10 a day. We are -- all the investments in our railroad  
11 are private, that is all BNSF money going in to making  
12 sure that we have the safest and most efficient railroad  
13 in the country.

14 We have about 337 employees here in north  
15 Idaho. We have about 106 miles of track in Idaho, in  
16 primarily north Idaho, coming in from Whitefish through  
17 Bonners Ferry into Sandpoint, Coeur d'Alene and into  
18 eastern Washington. And we move goods that we all use  
19 every day from the clothes we wear to the food we eat to  
20 the cars we drive and everything in between.

21 In this project we are proposing three  
22 additional structures, one over Lake Pend Oreille and  
23 two additional structures at Bridge Street and at Sand  
24 Creek. This project is about being more efficient for  
25 the goods that we're moving right now. This project

1 right now is a funnel. It is a congested area for BNSF.  
2 By adding these additional structures over Lake Pend  
3 Oreille and at Sand Creek and at Bridge Street will  
4 allow us to move the goods that we all use every day  
5 more efficiently. It will help decrease blockings at  
6 grade crossings in -- not only in Sandpoint in our  
7 county but into eastern Washington and to Montana as  
8 well.

9 We also have a short video that we'd like to  
10 play.

11 (Whereupon the following is the transcription  
12 of a video which was played.)

13 Population growth across the United States and  
14 northern Idaho is driving demand for more building  
15 materials, energy, consumer goods and agricultural  
16 products which all move by rail. Rail traffic moves on  
17 single, double and even triple track across the Pacific  
18 Northwest. BNSF Railway meets up with Montana Rail Link  
19 at Sandpoint, Idaho. There rail traffic from both  
20 railroads merge together to travel over Lake Pend  
21 Oreille on a single track bridge.

22 Soon BNSF will have double track stretching to  
23 Hauser, Idaho. This improves service to customers while  
24 keeping freight moving safely through the Pacific  
25 Northwest, Montana and the rest of the northern United

1 States.

2 As you can imagine, much like a highway,  
3 delays can happen when you merge multiple lanes down to  
4 one lane. And if you have a two- or three-lane highway  
5 that merges to one lane shared by both directions of  
6 traffic, you will see backups on either side that can  
7 extend for many miles.

8 This single track bridge over Lake Pend  
9 Oreille funnels rail traffic down to one lane shared by  
10 both directions. It slows trains as they come to  
11 Sandpoint but also has an impact all the way into  
12 Washington and Montana. By building a second main line  
13 bridge over the lake, trains will move across the lake  
14 both directions at the same time, reducing the time  
15 trains must wait for other trains to cross the bridge.  
16 Freight will be able to continue to move and get through  
17 the area much more efficiently, which is important not  
18 only to producers and shippers but the consumers who use  
19 their goods every day.

20 The second rail bridge over Lake Pend Oreille  
21 will provide immediate benefits by relieving a  
22 bottleneck. But it will also keep both passenger and  
23 freight trains moving safely across the northern United  
24 States now and well into the future.

25 (Which concludes the video.)

1 MS. WALLACE: Thank you. At this time I will  
2 turn it over to Pierre.

3 MR. BORDENAVE: Mr. Hearing Officer, my name  
4 is Pierre Bordenave, P-i-e-r-r-e B-o-r-d-e-n-a-v-e. I'm  
5 with Jacobs Engineering, Environmental Services Group.  
6 I'm the applicant's agent for this project.

7 I'd like to just acknowledge the team that put  
8 this -- that's been putting this together; BNSF Railway,  
9 of course, Hansen Professional Services, Matt Fletcher  
10 and his structural and civil design team and Jacobs  
11 Engineering Environmental Group, which is local  
12 biologists and environmental specialists that are here  
13 right in Sandpoint. This is not an experts-from-afar  
14 situation. These are people the community knows.  
15 People that boat, fish, swim, play and enjoy the reasons  
16 why we live here too.

17 I moved to Sandpoint 35 years ago which gives  
18 me a bit of a perspective. When I moved here I was  
19 aware, like anyone else that moves here, that there  
20 seemed to be a lot of trains in Sandpoint. At the time  
21 there are about 30, 35 trains on the BNSF lines, then  
22 known as Burlington Northern, and another five to ten  
23 trains on Union Pacific/Spokane International. Even at  
24 that time Sandpoint was known by train buffs around the  
25 country as "the funnel." This is where somebody could

1 take great pictures of trains of various types in a wide  
2 variety of scenarios and scenes. It's where several  
3 rail lines that connected the United States when it was  
4 a -- when this area was a territory came together; the  
5 Great Northern, which is BNSF; the Northern Pacific,  
6 which is MRL; and the Spokane International/UP.

7 This conjunction of railroads is essentially  
8 why Sandpoint exists. Every decade there are more  
9 people in the world, in the United States, in Idaho, in  
10 Bonner County. And, of course, every decade I've lived  
11 here there are more trains. They come through Sandpoint  
12 carrying the goods required by that growth which leads  
13 me to this project and our process.

14 The overview of this project is that -- a  
15 process of how a project is supposed to get done. First  
16 you define a need. I'm sure many of you have heard or  
17 read the claim that building this connector would  
18 somehow double the number of trains. There's absolutely  
19 no basis to that assumption, which then appears to be  
20 the foundation of speculation and conjecture which then  
21 leads to incorrect conclusions and projections. So  
22 that's one. We have a defined need.

23 This is not the case of Field of Dreams; if  
24 you build it, they will come. The project is not based  
25 on speculation. Granting a permit can't be based on

1 speculation, just as denial of a permit should not be  
2 based on speculation. This project does not create a  
3 demand. This addresses an existing defined need.

4 Step two in the process is evaluate the  
5 condition. Our team is local and has years, even  
6 decades of intimate knowledge of the area, the site-  
7 specific conditions and worked with BNSF and the design  
8 engineers to follow the required process of avoid  
9 impacts where possible, minimize when they cannot be  
10 avoided and develop mitigation options for the  
11 unavoidable impacts.

12 Our overview on the slide identifies the north  
13 end. This is a new second track along with signals,  
14 switches, infrastructure to support that. And it also  
15 includes three new bridges; Bridge 3.0 over Bridge  
16 Street; 3.1 over Sand Creek and 3.9 over Lake Pend  
17 Oreille. Those represent mileposts on the railroad  
18 line.

19 The north end is where two rail lines, the old  
20 Great Northern BNSF and MRL, join. The Amtrak depot,  
21 where the new line will be adjacent to it, there will be  
22 no alterations to the renovated depot building. There  
23 will be reconfiguration upgrades to the platform and  
24 parking.

25 There's Bridge Street in which the new bridge



1 adjacent, which is west of the existing bridge, which  
2 will have greater vertical and horizontal clearances  
3 than the existing bridge. The construction plans and  
4 timing were developed to minimize traffic impacts and to  
5 ensure continuous access. Working with the -- this will  
6 be working with the City of Sandpoint so that that is  
7 maintained.

8 Sand Creek, the design and construction  
9 approach was developed to minimize in-water  
10 jurisdictional and navigational impacts. I'll have more  
11 on that a little later here. And then Lake Pend  
12 Oreille, the design and construction also, again, was  
13 developed to minimize in-water jurisdictional and  
14 navigational impacts. It essentially has half the  
15 number of piers and spans as the existing bridge.  
16 Longer spans, fewer piers in the water. And then you  
17 have the connector at the south end which connects to  
18 the existing Algoma double track, which makes this a  
19 continuous and complete project.

20 So I'll touch on the jurisdictional impact  
21 overview. The total unavoidable impacts in the end  
22 were -- that we've applied for to jurisdictional areas  
23 is 1.54 acres. As I said before, the process is to  
24 avoid, minimize and mitigate. Originally we were about  
25 five acres of ideal conditions in order to build this,

1 five acres of jurisdictional impact. Then it dropped.  
2 We were able to work with the owner and the design  
3 engineer to get it down to around three acres. In the  
4 end, when we fully pulled all of our plans together,  
5 made -- developed different alternatives, we ended up  
6 with 1.54 acres. This is how it's supposed to be done,  
7 working close with the owner, the design team and the  
8 environmental team to develop ways to avoid impacts.

9           The nearshore impacts is a combined of 1.26  
10 acres of both permanent and temporary impact and a  
11 wetland fill of 0.28 acres, which I will get -- and be  
12 in more detail here right at the Sand Creek -- my next  
13 slide here.

14           The overview on Bridge 3.1 over Sand Creek is  
15 there will be 0.06 acres of nearshore impact, a  
16 construction bridge, a new bridge and 0.28 acres of  
17 wetland fill. Detail up close of that, at the north  
18 end, there will be 0.05 acres of temporary nearshore  
19 fill. It's assumed to be because of the steep slopes  
20 and to provide safe access for workers during  
21 construction and then that fill would be removed. This  
22 was reduced from the original proposed fill to fill out  
23 to the entire right of way line, to just extend that all  
24 the way out. Ideally that would have been easier, but  
25 there were a number of complications. And in the design

1 process that's how, again, good projects get pulled  
2 together. You pull all of your information together and  
3 identify the alternatives that have the least impact.

4 Bridge 3.1 at the south end detail, you see  
5 the wetland fill is between the railroad. It's a area  
6 between the railroad and the bike path. And a very  
7 small area of nearshore fill right at the edge of the  
8 bridge that's to protect the abutment of the bridge.  
9 This is also -- that was also reduced from the  
10 originally proposed much larger than that.

11 Jurisdictional impacts on Lake Pend Oreille at  
12 the Bridge 3.9. North you have 0.3 acres of temporary  
13 nearshore fill and 0.57 acres of permanent nearshore  
14 fill, which, again, was significantly reduced from the  
15 original. The temporary fill is for the access to the  
16 construction bridge to provide safe access and that  
17 would be removed. The permanent fill is there for the  
18 new bridge and provide a stable platform for that. It  
19 also -- there's a temporary construction bridge that  
20 would be coming off of that in order to build the new  
21 bridge across the Lake Pend Oreille.

22 Next, at the south end, there is a small area  
23 of temporary fill of 0.03 acres of temporary nearshore  
24 fill and 0.01 acres of permanent nearshore fill. Again,  
25 it's associated with the -- eliminating scour at the

1 south end. And, again, this was reduced from originally  
2 just, you know, a desire, you know, to make things easy  
3 would be just to fill that entire end.

4           The jurisdictional impact at the south end, at  
5 the Sandpoint junction connector, the Algoma end  
6 connection, there's 0.29 acres of permanent nearshore  
7 fill. This was originally about a half an acre. We  
8 were able to sharpen our pencils and get this down to  
9 what is absolutely necessary for that -- for the two  
10 lines to be able to merge at this location and within  
11 the existing switch area. It's also avoided a  
12 significant amount of blasting on the east side rock  
13 area, which would be below and adjacent to Bottle Bay  
14 Road. That was one of the primary reasons that that  
15 option and that alternative was avoided.

16           Let's talk about construction staging and  
17 access. The overview is that most everything here has  
18 got existing access. There are also existing staging  
19 areas on BNSF property. At the north end, north of the  
20 Amtrak depot, we have existing access from the north and  
21 from Bridge Street and a fairly large existing upland  
22 staging area north of there. There's an existing upland  
23 staging and access between Highway 95 and the rail line.  
24 At all times the multi-use pathway will remain open  
25 throughout any activity, work or -- and, of course,

1 after construction.

2 At the construction staging at the south end  
3 of Lake Pend Oreille, there's, again, an existing upland  
4 staging area south of Bridge 3.9. There's also a  
5 existing access from Bottle Bay Road all the way to this  
6 site. So there would be no -- other than improving on  
7 that, there would be no major construction necessary for  
8 that.

9 Moving on to navigation, which is a very  
10 important part of this, part of what took a lot of  
11 effort and time to pull the plans together. The Sand  
12 Creek navigation, the bridge -- the new bridge would  
13 have wider and higher permanent spans. There will be no  
14 navigation impairing work during high water. And  
15 construction -- and the construction bridge itself, the  
16 navigation spans and the pilings would be removed during  
17 the boating season if the -- should the work not be able  
18 to get done during low water. That is the plan right  
19 now to do that. But in that event there would always be  
20 the same level of navigational access through Sand  
21 Creek.

22 This is a navigational profile just to, again,  
23 just demonstrate the width of the new bridge, which  
24 would be the -- which would be shown on here in black,  
25 and the existing bridge span which is in red. So you

1 can see that it's a wider area so that in the future at  
2 some time if there is a change to the -- that other  
3 bridge then that would not be the restricting structure  
4 there.

5 This is a simplified -- this slide is a fairly  
6 simplified representation from the navigational report  
7 that's on file on the level of detail that was needed to  
8 perform the many iterations of engineering design in  
9 order to minimize the environmental and navigational  
10 impact. This has got a lot of information. Every  
11 single span, every single pier, every -- every aspect  
12 from depth of the water to the clearance all evaluated  
13 in order to come up with the design that we ended up  
14 with. And in the end, navigational profile will be that  
15 the plan for the design and construction, it would --  
16 the plan is for year-round work. The navigation will be  
17 maintained during construction. And all vessels that  
18 can pass under the highway bridge right now will be able  
19 to clear both the construction and new rail bridges.  
20 The highway bridge is just downstream from the rail  
21 bridge. So during construction that that will not be  
22 impaired. The limiting structure will still be the  
23 highway bridge going across the lake.

24 So the key take-aways that I'm going to -- on  
25 this overview. The project is to meet an existing need.

1 The project impacts avoid and minimize to the greatest  
2 extent practiceable the impacts that could be avoided.  
3 The project will maintain navigation, vertical and  
4 horizontal clearances, for the majority of the bridge  
5 spans during construction and will not be the governing  
6 restrictive clearance structures after construction.  
7 All work is on BNSF property. Work is privately funded,  
8 no State or federal dollars are involved. And the  
9 access and existing -- staging is planned to minimize  
10 local impacts.

11 And with that I'm -- wrapping up with the  
12 existing conditions. Again, the slide that identifies  
13 that at the two end sections are approximately ten years  
14 old. They were rebuilt about ten years ago. They're on  
15 steel pilings right now. That's on the existing bridge.  
16 I was involved in the permitting for those projects.  
17 The majority of the bridge is from the 1950s on concrete  
18 piers. I wasn't born, so I didn't get my -- get  
19 involved in that one. But the center part is nine spans  
20 and pier structures from the early 1900s.

21 So in closing thoughts on that. I just want  
22 to imagine, if we would, that we had a single lane  
23 highway bridge that's the only way to get to or from  
24 Sandpoint for a hundred miles. Now let's say that all  
25 goods and service for this entire region had to pass

1 over that bridge. Then let's say the bridge was still  
2 serviceable and safe, but it was built when most  
3 vehicles on that bridge were horses and buggies.  
4 Because it's a one-lane bridge, only a hundred cars and  
5 trucks can pass over that bridge in each direction at a  
6 time and those hundred-vehicle groupings are required to  
7 wait their turn to cross.

8 Meeting present needs and providing redundancy  
9 would dictate that a second bridge is not just a good  
10 idea but a critical necessity. By that same token, the  
11 same need for redundancy, meeting existing demands and  
12 critical and necessary infrastructure are the conditions  
13 that now exist and why BNSF Sandpoint Juncture Connector  
14 Railroad Project needs to be permitted and built.

15 With that, thank you. Is there's any  
16 questions?

17 HEARING OFFICER BROMLEY: No. Thank you.

18 MR. BORDENAVE: Okay.

19 HEARING OFFICER BROMLEY: All right. So we're  
20 at the point now with other public agencies. Are there  
21 any other public agencies besides the Department of  
22 Lands who are present and would like to provide comment?  
23 Yes. You.

24 MS. SIITARI: Hi, Mr. Hearing Officer. My  
25 name is Kiira Siitari with Idaho Department of Fish and



1 Game. That's K-i-i-r-a. Last name S-i-i-t-a-r-i.

2 The Idaho Department of Fish and Game provided  
3 comments to Idaho Department of Lands, the Army Corps  
4 and Coast Guard in two letters dated March 28th and  
5 May 14th. We have no new information, but I just wanted  
6 to let you know I'll be at both hearings. And I'm here  
7 to provide any technical information or clarifications  
8 that you need.

9 HEARING OFFICER BROMLEY: Thank you. Any  
10 other public agencies?

11 (No response.)

12 HEARING OFFICER BROMLEY: Terrific. Okay.  
13 Sir?

14 MR. HAGEN: I'm not a public -- I -- I don't  
15 know what you mean by public agency. (Unintelligible.)

16 HEARING OFFICER BROMLEY: So, sir -- just a  
17 moment, sir. I saw you walk in late. And I had given  
18 an overview of the process of where we were going to go  
19 today. And that meant that we were hearing from the  
20 Coast Guard, the Army Corps and then BNSF and then any  
21 other public agency, so meaning sheriff, police, fire,  
22 Fish and Game, then the Department of Lands. After all  
23 of that then I'm going to take public comment from the  
24 general public.

25 MR. HAGEN: Okay. Thank you.

1 HEARING OFFICER BROMLEY: Does that make  
2 sense?

3 MR. HAGEN: Yeah. Yes.

4 HEARING OFFICER BROMLEY: Okay. Thank you.  
5 So Department of Lands.

6 MS. FRENCH: Good morning, Mr. Bromley.

7 HEARING OFFICER BROMLEY: Good morning.

8 MS. FRENCH: For the record, my name is Diane  
9 French. And that is spelled D-i-a-n-e. Last name  
10 French, F-r-e-n-c-h. I am the division administrator  
11 for the Idaho Department of Lands in the Lands and  
12 Waterways Division.

13 The Department would like to offer testimony  
14 on the joint application for permits, herein called the  
15 joint application, received from the Burlington Northern  
16 Santa Fe Railway Company, BNSF, and specifically related  
17 to the Department's non-navigational encroachment permit  
18 portion of the application concerning the new Bridge 3.1  
19 over Sand Creek and a new Bridge 3.9 over Lake Pend  
20 Oreille and then several fills in Sand Creek and Lake  
21 Pend Oreille.

22 This testimony is intended to provide you with  
23 specifics on the application process, the right of way  
24 owned by BNSF, pertinent authorities or standards that  
25 the Department believes are relevant to your decision on

1 the application and IDL's opinion on how the application  
2 does or does not meet the applicable standards.

3           So in terms of the application processing, IDL  
4 received the joint application on February 22nd of 2018.  
5 The Department sent notification on the application to  
6 eleven different parties consisting of federal, state  
7 and local government agencies as well as non-  
8 governmental organizations. The IDL also sent  
9 notification to seven adjacent littoral landowners.  
10 While 12 adjacent owners are listed in the joint  
11 application, eight of those owners are adjacent to the  
12 total project area, but the -- not the specific portions  
13 of the project that are over navigable waters. In  
14 addition, while four adjacent littoral owners were  
15 listed in the joint application, IDL identified three  
16 additional littoral owners that could also be impacted  
17 by the proposed project which brought the total number  
18 of adjacent littoral owners notified by the Department  
19 to seven.

20           In addition, IDL caused a notification of the  
21 application receipt by the Department to be published in  
22 the Bonner County Daily Bee for two consecutive weeks,  
23 on February 28th and March 7th. All notifications and  
24 publications stated that the application ERL-96-S-0096E,  
25 BNSF Railway Company, was for installation of a second

1 railway bridge across Sand Creek and Lake Pend Oreille  
2 and that a copy of the application could be obtained  
3 from IDL on our public website and requested that  
4 submittal of written public comments be received by  
5 March 30th.

6 So on or about March 12th, IDL posted the  
7 application, related documents and all comments received  
8 to date on our public website. IDL has periodically  
9 updated the website with public comments as received.

10 On March 14th our acting director, David  
11 Groeschl, G-r-o-e-s-c-h-l, issued a notice of  
12 appointment of hearing coordinator in hearing for the  
13 hearing conducted today. IDL caused a notification of  
14 the hearings to be published in the Bonner County Daily  
15 Bee for two consecutive weeks, on March 20th and  
16 March 27th. The publication stated that IDL would  
17 accept written comments through close of the hearing on  
18 May 23rd. That is today. And all public agency  
19 comments were posted to IDL's website as quickly as  
20 possible.

21 With roughly 1,100 comments received as of  
22 yesterday and submitted, the IDL web page was updated  
23 periodically, and we acknowledge a time delay in posting  
24 of all comments due to the number of comments received.  
25 Those will be posted through today.

1           To ensure ample time given for receipt of all  
2 public comment, the Department accepted comments on this  
3 application for nearly 90 days, from February 26th  
4 through May 23rd, extending beyond the 30-day  
5 requirement under Idaho Code 58-1306C and IDAPA  
6 20.03.04.030. All notification and publication  
7 requirements were met for processing of this application  
8 and is outlined under IDAPA 20.03.04.030. As I said  
9 before, written public comments are due today at the  
10 closing of our evening hearing.

11           So I'd like to talk a little bit about the  
12 BNSF Railroad Company right of way. Upon statehood in  
13 1890, the State of Idaho obtained title to the beds and  
14 banks of navigable waters, lakes and rivers within  
15 Idaho. It is the express policy of the State of Idaho  
16 that the public health, interest, safety and welfare  
17 requires that all encroachments upon, in or above the  
18 beds or waters of navigable lakes of a state be  
19 regulated in order that the protection of property,  
20 navigation, fish and wildlife habitat, aquatic life,  
21 recreation, aesthetic beauty and water quality be given  
22 due consideration and weighed against the navigational  
23 or economic necessity or justification for or benefit to  
24 be derived from the proposed encroachment. Moreover, it  
25 is the responsibility of the State Board of Land

1 Commissioners to regulate and control the use or  
2 disposition of State owned lake beds to provide for  
3 their commercial, navigational, recreational or other  
4 public use. And this is per IDAPA 20.03.04.012.

5           During the initial review of the joint  
6 application IDL requested from BNSF a copy of the BNSF  
7 right of way referenced in block 23 of the joint  
8 application. A copy of that right of way document is  
9 attached to this testimony. This document states that  
10 in 1864 the United States granted a right of way to  
11 Northern Pacific Railway Company who is the predecessor  
12 in interest to BNSF. The right of way was therefore  
13 granted prior to statehood in 1890 when the State of  
14 Idaho obtained title to the beds and banks of navigable  
15 lakes and rivers within Idaho. An 1890 Rand McNally map  
16 of the right of way is also attached to this testimony  
17 that shows the railroad crossing over Lake Pend Oreille  
18 near Sand Point.

19           The State of Idaho does not claim ownership of  
20 the lake bed within the BNSF Railway right of way as  
21 this is privately owned submerged lands. In addition,  
22 no State easement exist for the current railroad bridge  
23 over Sand Creek or Lake Pend Oreille and no State  
24 easement would be required for the two proposed railroad  
25 bridges or fills covered under this permit application

1 and placed within the existing railroad right of way.  
2 And as I will discuss further, an encroachment permit  
3 will be required from the Department pursuant to the  
4 Lake Protection Act.

5 So now to talk a little bit about the IDL  
6 authorities and standards. The Lake Protection Act,  
7 Idaho Code 58-1301, requires the State to review and  
8 approve an application before any encroachment can be  
9 placed on, in or above the beds or waters of any  
10 navigable lakes. Lake Pend Oreille is a navigable lake  
11 as established by the Idaho Supreme Court in Gasman  
12 versus Wilcox, 1934.

13 Bridge 3.0 shown in the application is over  
14 Bridge Street and does not require an encroachment  
15 permit from IDL. Bridge 3.9 and associated fills as  
16 well as the fill for the East Algoma turnout shown in  
17 the application are subject to the Lake Protection Act.

18 IDL has issued encroachment permits for work  
19 on the existing bridge in the past. The lake also  
20 extends up into the mouth of Sand Creek which makes  
21 Bridge 3.1, the temporary bridge and associated fills,  
22 as shown in the application, subject to the Lake  
23 Protection Act. IDL has issued encroachment permits for  
24 docks and other structures placed in the Sand Creek  
25 slew. This includes the bridge and associated fills for

1 the Highway 95 Sand Creek byway.

2 Privately owned submerged lands are still  
3 subject to the Lake Protection Act and associated  
4 administrative rules as affirmed by the Idaho Supreme  
5 Court in State versus Hudson, 2017. IDAPA  
6 20.03.04.030.02 states encroachments not in aid of  
7 navigation in navigable lakes will normally not be  
8 approved by the Department and will be considered only  
9 in cases involving major environmental, economic or  
10 social benefits to the general public. Approval under  
11 these circumstances is authorized only when consistent  
12 with the Public Trust Doctrine and when there is no  
13 other feasible alternative with less impact on public  
14 trust values. In addition, IDAPA 20.03.04.030.10 states  
15 in part in recognition of continuing private property  
16 ownership of lands lying beneath the natural or ordinary  
17 high water mark and the artificial high water mark, if  
18 present, the Department shall consider unreasonable  
19 adverse effects upon adjacent property and undue  
20 interference with the navigation as the most important  
21 factors to be considered in either granting or denying  
22 an application for either a non-navigational  
23 encroachment or a commercial navigational encroachment  
24 not extending below the natural or ordinary high water  
25 mark. While this does not exactly describe the BNSF



1 bridge application, due to BNSF's right of way ownership  
2 below both the artificial and ordinary high water marks  
3 it is good guidance for review of this application.

4           These two rule subsections of IDAPA  
5 20.03.04.030.02 and 20.03.04.030.10 are the primary  
6 guidance to review of this permit application under the  
7 Lake Protection Act and associated IDAPA rules.

8           I will now talk a little bit about the IDL  
9 analysis on the permit application. Per the joint  
10 application submitted by BNSF, all permanent fill and  
11 structure would occur within the authorized BNSF right  
12 of way. About 250 feet of the temporary bridge and a  
13 few square feet of the temporary fill on the north side  
14 of the Sand Creek bridge area would be outside of the  
15 right of way. The Department considers this a temporary  
16 impact to the area between the Sand Creek shoreline and  
17 the existing Highway 95 bridge. And it is not expected  
18 to impact the adjacent property managed by the Idaho  
19 Transportation Department for Highway 95. No other  
20 adjacent properties are expected to be impacted by the  
21 proposed project due to the width of the BNSF right of  
22 way.

23           The existing bridge across Sand Creek has a  
24 42-foot span for boat navigation, and the proposed new  
25 bridge would have a 72-foot span. This is not likely to

1 hinder navigation. The proposed permanent nearshore  
2 fill is only 0.01 acres on the south abutment and is not  
3 likely to impact navigation. The proposed bridge across  
4 Lake Pend Oreille is designed to have wider boat traffic  
5 spans than the existing railroad bridge. BNSF has  
6 proposed an alignment of the boat traffic spans between  
7 the existing bridge and the proposed bridge. As a  
8 result IDL does not expect navigation hindrance by the  
9 proposed bridge.

10           The proposed permanent nearshore fills  
11 associated with the new bridge across Lake Pend Oreille  
12 are also not likely to hinder navigation. The proposed  
13 fill on the north end is the largest one proposed at  
14 0.57 acres, but it is between the existing railroad  
15 bridge and Highway 95 bridge in shallow water. The  
16 proposed fill on the south end is only 0.01 acres and  
17 extends about 15 feet into a very shallow portion of the  
18 lake. The proposed fill for the Algoma turnout covers  
19 about 0.29 acres and only extends about 40 feet into the  
20 lake. The existing shoreline is already dominated by  
21 the BNSF tracks, so navigation along this 500-foot span  
22 of shoreline is likely minimal. The impact of this fill  
23 on navigation is therefore also likely minimal.

24           In summary, the Department has processed this  
25 encroachment permit application in accordance with IDAPA

1 20.03.04.030 and deemed the application complete.  
2 Permanent encroachments in the proposed project fall  
3 within the privately owned submerged lands of the BNSF  
4 right of way that was granted 26 years prior to  
5 statehood. Consistent with the standards in IDAPA  
6 20.03.04.030.10 for privately owned submerged lands, the  
7 proposed project does not appear to have unreasonable  
8 adverse effects to adjacent littoral landowners or does  
9 it interfere with navigation. The proposed project also  
10 appears to meet the standards for non-navigational  
11 encroachments in IDAPA 20.03.04.030.02 by providing  
12 economic and social benefits to the general public.

13 IDL believes that the hearing record shows  
14 that the additional bridge would potentially relieve  
15 rail freight traffic bottleneck and improve interstate  
16 commerce. I appreciate this opportunity to provide the  
17 testimony on behalf of the Department of Lands.

18 HEARING OFFICER BROMLEY: Thank you. Okay.  
19 So as the computer is being taken down, this is the time  
20 then for comments from the general public. Sir, would  
21 you like to provide comment?

22 MR. HAGEN: Yeah. Please.

23 HEARING OFFICER BROMLEY: And have you signed  
24 in?

25 MR. HAGEN: Yes.

1 HEARING OFFICER BROMLEY: Yes, you have.

2 Okay. Please come up to the podium.

3 MR. HAGEN: Okay.

4 HEARING OFFICER BROMLEY: And then state and  
5 spell your name for the record. Thank you.

6 MR. HAGEN: Hello. My name is Don Hagen,  
7 H-a-g-e-n --

8 HEARING OFFICER BROMLEY: Mr. Hagen, again,  
9 since you weren't here for the introduction part, we  
10 have a court reporter who's transcribing every word  
11 that's spoken and --

12 MR. HAGEN: Okay. Speak slowly.

13 HEARING OFFICER BROMLEY: Right.  
14 (Continuing.) -- the only way for her to do that is if  
15 you speak slowly.

16 MR. HAGEN: Okay.

17 HEARING OFFICER BROMLEY: Thank you.

18 MR. HAGEN: Don Hagen, H-a-g-e-n. And I  
19 belong to a group with -- the library calls us The  
20 Scholars. We meet at the library once a week.

21 HEARING OFFICER BROMLEY: Hold on. We just  
22 lost the --

23 MR. HAGEN: I heard that.

24 HEARING OFFICER BROMLEY: Mr. Hagen, just a  
25 moment. So we just lost the mic.

1 (Brief interruption.)

2 MR. HAGEN: Yeah, we call -- the library calls  
3 us The Scholars. We meet once a week and we talk about  
4 problems like this and try sometimes to do some kind of  
5 a public -- about that. And concerning this -- on  
6 this -- I'll kind of abbreviate this thing.

7 In BNSF's own words the project need is based  
8 on a continued growth of the freight rail service  
9 demands in the northern tier high volume traffic  
10 corridor between the Midwest and the West Coast. This  
11 increase is already increasing the wait times for  
12 vehicles at railroad crossings which apparently  
13 complicates train scheduling and results in a reduction  
14 of train traffic across the lake.

15 I live on the lake and see that even though  
16 trains cross about every 10 to 15 minutes, there are  
17 frequent times when no trains cross for 25 to 55  
18 minutes. I think that more frequent crossings could  
19 occur if BNSF could operate independent of the road  
20 crossings. Thus I conclude that if increased traffic is  
21 inevitable then this is not a bridge problem but rather  
22 a road crossing problem which could be alleviated by  
23 building over, slash, underpasses at nearby road  
24 crossings. If this is done then BNSF would be free of  
25 any concerns about vehicle delays and could have a more

1 compressed train traffic schedule, because once you go  
2 across the bridge the train tracks spread out.

3 Okay. And then another possible solution  
4 would be to run the railroad along the Interstate 90.  
5 However, this would be extremely expensive and would run  
6 into opposition from NIMBYites along the route. So  
7 there I am. I'm taking a different viewpoint.

8 HEARING OFFICER BROMLEY: Thank you,  
9 Mr. Hagen. Okay. Anyone else? Yes, sir.

10 MR. GARTON: Good morning. John Garton,  
11 G-a-r-t-o-n. I've been coming to Sandpoint every summer  
12 for over 12 years. And one of the first things I do is  
13 purchase a out-of-state fishing license. And I also  
14 visit old friends that live here, new friends that I've  
15 made here. I've stayed at the beautiful Seasons resort.  
16 And I fish the lakes and all the rivers every chance I  
17 get. And when I discovered the proposed BNSF bridge  
18 project, I was concerned that there was no current plan  
19 to perform an EIS only an assessment. And then possibly  
20 just that before construction and then I was appalled  
21 about that.

22 Friends here tell me that the bypass for  
23 Highway 95, when that was proposed, a full EIS was  
24 conducted. That highway seems to be far less an impact  
25 on the environment than these proposed bridges. Surely

1 a high risk like this rail bridge deserves more  
2 scrutiny. I'm asking the agencies involved to please do  
3 a full environmental impact statement before proceeding.

4 And BNSF should look elsewhere to improve  
5 their service someplace that avoids all the river and  
6 lake crossings here. Who really -- in the -- if there  
7 is, God forbid, a waste -- hazardous waste or oil spill,  
8 who knows what the quality of the water, the fishing,  
9 and the drinking -- drinking water for those residents.  
10 Thank you very much.

11 HEARING OFFICER BROMLEY: Thank you,  
12 Mr. Garton.

13 MR. MORGAN: Good morning, Mr. Facilitator.

14 HEARING OFFICER BROMLEY: Good morning.

15 MR. MORGAN: Madam Recorder. My name is  
16 Steven, S-t-e-v-e-n, Morgan, M-o-r-g-a-n.

17 Land Board members, Corps of Engineers, Fish  
18 and Game, the Coast Guard, I've got comments for each  
19 and every one of you individually. I'll start generally  
20 by saying that I'm respectfully requesting that the  
21 agencies involved in permitting this project consider my  
22 comments individually. I ask that you make no  
23 determination or decision approving a permit until a  
24 full and final environmental impact statement has been  
25 completed.

1                   To the Idaho Land board, I moved to Bonner  
2 County two years ago after visiting this beautiful area  
3 for many years. I moved here for the beauty of the  
4 environment, the wonderful water sport activities, the  
5 pristine water and, like Mr. Garton, the fishing. I  
6 bring my grandchildren here every summer to fish and  
7 hopefully to gain an appreciation for nature and to gain  
8 a healthy respect for our environment.

9                   I'm very concerned that the impact on this  
10 project on all these things and that they have not been  
11 fully studied before decisions are being made. I heard  
12 a lot about a very, very narrow definition of what this  
13 project is. You know, 0.28 acres here, point, you know,  
14 whatever. It's more than just 0.28 acres of fill into  
15 wetlands areas. It's more than just two bridges and  
16 maybe some traffic delays or navigation delays. This  
17 project is going to change everything we care about in  
18 Bonner County. Everything. This is going to impact  
19 everything downstream if there's a spill. It's going to  
20 impact our water, our drinking water, the way that we  
21 navigate our bridges, operate our boats. And these  
22 things have to be considered.

23                   One of the things the Land Board you mentioned  
24 you have to look at is alternatives. Well, an  
25 alternative of whether we build it on the north side or



1 the south side of the existing bridge is not a true  
2 alternative. That's a red herring. Real alternatives  
3 is what else can we do, like the first gentleman who  
4 testified. You know, Can we put it somewhere else? Can  
5 we move it? Are there other ways to do this besides  
6 building a bridge? That is what I'd like you to  
7 consider, please.

8 To the U.S. Coast Guard, I'm a property owner,  
9 a recreational boater and a fisherman. I'm also a  
10 disabled veteran having served over 30 years. My wife  
11 served 22 years and she's also a disabled veteran. We  
12 moved to Bonner County, as I said, two years ago. And  
13 when we came to visit, we always boated and fished  
14 especially when our children and grandchildren came. My  
15 daughter recently bought a townhouse at The Seasons.  
16 This is directly connected to some of this project and  
17 wherever constructed. She just bought a new fishing  
18 boat for our use. And she has a slip in Sandpoint. We  
19 also kayak and we enjoy almost all the water sports we  
20 can here.

21 The existing bridges already impede and limit  
22 maritime traffic, safe navigation and especially for  
23 novices. And this can be challenging to navigate at  
24 times. Adding yet another challenge and more limits  
25 should be better assessed. Water and air quality are

1 obviously important to us as well. As we fish and we  
2 want to consider their habitat because we want our  
3 grandchildren to also enjoy that. And as we age and as  
4 disabled veterans we find that it's very concerning to  
5 us that rail traffic, no matter what's being said, it's  
6 going to increase. I don't think any major corporation  
7 in America is going to spend \$150 million because -- for  
8 no reason. It's going to increase.

9 I live in Ponder Point. We have one way in  
10 and one way out. We already get 60 trains a day, around  
11 there. If that increases it's going to be harder and  
12 harder for us to get in and harder and harder, God  
13 forbid, for emergency vehicles to access our  
14 neighborhood. I'm also concerned about impact on  
15 property values. You know, they talked about impacts.  
16 They talked about, you know, the fish and the water and  
17 that's all important too. But I didn't hear anything  
18 about the impacts on property values. That's something  
19 that an EIS would put our minds at rest about. Is this  
20 going to be a good thing for Bonner County? I don't  
21 know. But Idaho needs to consider our values as well,  
22 not just BNSF.

23 To the Army Corps of Engineers, as a 30-year  
24 Marine I've traveled the world. I've been in every U.S.  
25 state and all but two provinces in Canada. And I've

1 seen the impacts on our fragile ecosystems of  
2 industrialization. Every single speck of wetlands is  
3 essential to the health and environment. Despite the  
4 small size of this proposed fill, the impact on native  
5 species and endangered ones especially must be  
6 evaluated. I ask for a full EIS before any permitted  
7 activity begins.

8           In closing I'll give you two examples. When I  
9 moved here Highway 200 was not too bad. There's two  
10 rail tracks along there. If you look at what BNSF has  
11 done, they clear-cut all the trees and now if you just  
12 drive out of here and look down there, it looks like an  
13 industrial wasteland. If that's what Sandpoint wants is  
14 an industrial wasteland then that's what they're going  
15 to get.

16           And my last example, you know, 0.28 acres  
17 doesn't sound like much. But if I took my pen and I  
18 drew a wart on the nose of the Mona Lisa, people would  
19 be upset about it. BNSF is doing more than drawing a  
20 wart on the nose of the Mona Lisa. They're going to  
21 change everything in this county. And if there's a  
22 spill, it's going to change everything permanently down  
23 water from us. Thank you very much.

24           HEARING OFFICER BROMLEY: Thank you  
25 Mr. Morgan. Sir.

1 MR. KENNALY: Good morning.

2 HEARING OFFICER BROMLEY: Good morning.

3 MR. KENNALY: Thank you for receiving  
4 comments. My name is Andrew Kennaly, A-n-d-r-e-w  
5 K-e-n-n-a-l-y. And I simply want to echo some of the  
6 comments I've heard this morning.

7 I appreciate the presentation to get a bigger  
8 picture of what the plans are. I appreciate the  
9 possible engineering benefits of a safer system than we  
10 currently have. However, I'm a bit concerned about the  
11 increased potential in railway traffic and the increase  
12 in the already happening pollution of this industry.  
13 I'm referring to the noise pollution specifically.

14 If you take all the railroad crossings within  
15 earshot and all the horn blasts, if you were to link all  
16 those together right now it would be about four hours of  
17 constant noise. And that affects property values. That  
18 affects quality of life. And if you increase that it's  
19 only going to get worse. And it seems to me that if  
20 Burlington Northern Santa Fe is very proud of the fact  
21 that this is privately funded, that they have lots of  
22 money to spend on helping our lives be better, they  
23 could fork out a few hundred thousand bucks to address  
24 grade crossings and the need for silent crossings. Like  
25 in Europe, they have a more advanced system than we do.

1 That would go a long way to help mitigate noise.

2 It would not address the larger problem of an  
3 industrial society. And that I think is reflected back  
4 on us, our desire for consumption and viewing nature as  
5 a commodity. So I would encourage us to not only do  
6 what we can to help mitigate pollution, but to also  
7 analyze how it is we view our world and our role in it.  
8 So thank you.

9 HEARING OFFICER BROMLEY: Thank you  
10 Mr. Kennaly. Sir, with glasses.

11 MR. CRAMER: Good morning. My name is Richard  
12 Cramer, C-r-a-m-e-r. And I'd like to echo what the  
13 gentleman just said regarding noise pollution. I live  
14 off of Lakeshore Drive. And there are two crossings  
15 there, and it is a constant whistle. And when they --  
16 when I listened to the presentation they said that the  
17 traffic wouldn't increase. There's -- if you build it  
18 they won't come. But what -- then he followed it up by  
19 saying that the trains have to wait. It's like -- it's  
20 self-regulated because you can't have more trains on  
21 that bridge. So self-regulating.

22 When you add that second lane, there's no way  
23 that the traffic is not going to increase. That's the  
24 purpose of the bridge. And I would like to see that --  
25 in the event that this permit is approved that they

1 mandate that BNSF provide rail crossings in Bonner  
2 County -- if there's a railroad crossing in Bonner  
3 County they put a -- or where it crosses a road they put  
4 a crossing so we don't have to hear the constant  
5 whistles. Thank you very much.

6 HEARING OFFICER BROMLEY: Thank you,  
7 Mr. Cramer. Sir on the end.

8 MR. LEWIS: Good morning.

9 HEARING OFFICER BROMLEY: Good morning.

10 MR. LEWIS: My name's Jim Lewis, L-e-w-i-s. I  
11 am the chief sales and marketing officer for Montana  
12 Rail Link. I'm here on behalf of our nearly 1200  
13 employees and hundreds of local and regional businesses  
14 that move their products across our railroad to voice  
15 our support for the Sandpoint Junction Connector.

16 HEARING OFFICER BROMLEY: Could you slow down  
17 just a little bit. Thank you, Mr. Lewis.

18 MR. LEWIS: Sorry. We'd also like to  
19 encourage timely approval of the necessary permits.  
20 Based in Missoula, Montana, MRL is a Class 2 regional  
21 railroad that operates over 900 miles of track from  
22 Huntley to Sandpoint, Idaho. We serve over 125 local  
23 businesses directly and hundreds of regional shippers  
24 whose products move across our line.

25 We transport these products to domestic and

1 international markets on a daily basis. We are  
2 committed to providing transportation services that  
3 result in long-term growth and prosperity for our  
4 company, customers and employees. Our shipments help  
5 feed, clothe, supply and power American and  
6 international homes and businesses every day.

7 Our crews currently operate trains over the  
8 single bridge which requires approaching trains to come  
9 to a stop and wait for clearance. Quite often it takes  
10 longer to travel from Sandpoint to Hauser, Idaho, than  
11 all the way from Missoula, Montana, to Sandpoint, which  
12 is 220 miles. It's 43 miles from Sandpoint to Hauser.

13 Our crews get on the train in Missoula, and  
14 it's typically a seven-and-a-half to eight-hour run to  
15 Sandpoint. It can be another five or six hours to get  
16 to Hauser from here. And so even just coming in today,  
17 I saw a couple of our trains that were staged waiting to  
18 get across the bridge.

19 A second bridge would eliminate this  
20 bottleneck and improve the flow of rail shipments  
21 throughout the Pacific Northwest thus improving service  
22 to our existing rail customers and allowing them to  
23 connect to their markets who continue to demand a more  
24 efficient and timely supply chain.

25 We are a global economy and U.S. producers

1 must be able to keep pace with global competitors who  
2 are investing heavily in transportation infrastructure  
3 to gain an edge over the U.S. So we would hope that  
4 this project will be approved and the necessary permits  
5 are approved. Thank you.

6 HEARING OFFICER BROMLEY: Thank you,  
7 Mr. Lewis. Anyone else? Yes, ma'am.

8 MS. HUNTLEY: My name is Kathleen Huntley,  
9 H-u-n-t-l-e-y. I had a few questions, so I don't know  
10 who to address but to address everybody.

11 I concur with the gentleman that we need an  
12 environmental impact report. Currently I would like to  
13 know the percentage of toxic materials that are going  
14 down this line, not automobiles or people. I would like  
15 to know if they've considered alternative routes as has  
16 been suggested. And that would be a good thing. I  
17 would like to know what "permanent fill" means. I don't  
18 comprehend that term.

19 On the construction line timeline, you spoke  
20 about operating in winter. I don't know who wrote that  
21 report. That doesn't seem to be feasible up here. I  
22 notice that when you address the environment impact the  
23 term "navigatable" was used quite a bit for our boats,  
24 but I didn't see about environmental. We do have fish  
25 species here that are endangered species. I think it's



1 the bull trout. I might be corrected on that. But they  
2 do -- and I'm not using the right term -- fish migrate  
3 but they call it something else, up river, down river.  
4 So going over Sand Creek during construction, how is  
5 that going to be addressed? Are there going to be  
6 cofferdams built?

7 And the spills. We have had a high percentage  
8 of spills here, sometimes due to no one's fault. Due to  
9 the weather, due to saturation of tracks, due to this,  
10 due to that. How is that going to be addressed? And  
11 when those toxic spills happen, will it go downstream?  
12 Because we eventually go to the Pacific Ocean from this  
13 waterway.

14 So I think -- again, I'm going to repeat it.  
15 We need a really comprehensive independent environmental  
16 impact report. I emphasize the word "independent."  
17 I've worked on major environmental issues before, and  
18 the reports were written by the company, which did not  
19 make them impartial. Thank you.

20 HEARING OFFICER BROMLEY: Thank you,  
21 Ms. Huntley. Anybody else? Yes, ma'am.

22 MS. NEFF: Hi. My name is Emily Neff,  
23 E-m-i-l-y N-e-f-f. And I wasn't planning to speak.  
24 However, I was surprised that the time allotted for  
25 this, at least what I saw, was 8:00 to 4:00 p.m. So I

1 was expecting a lot more information on the project.

2 I appreciate the trains remove road traffic  
3 and are also a safer and more efficient form of travel  
4 for our goods. However, there were a lot of questions  
5 that I found were unanswered. How much time will this  
6 save per train trip, approximately? I realize every  
7 train is different lengths and they go different speeds.  
8 How much faster will trains be able to travel? Will  
9 they be speeding through town faster? Will that cause  
10 any issues? Will that cause any more environmental  
11 problems with maybe coal dust or dirt or whatever  
12 that's -- that's thrown up into the air? How many  
13 trains need to wait for another train right now as it  
14 is?

15 We didn't hear -- we didn't hear any kind of  
16 numbers on anything. What is the length of time that  
17 trains are sitting there idling and -- you know, idling  
18 their diesels? It would be great if we were able to  
19 remove this amount of diesel from our air, the idling  
20 time. How much will this project increase the capacity  
21 of the rail line? And has BNSF been told that the  
22 amount of coal and oil transported is projected to  
23 increase? If it's not projected to increase then would  
24 I expect would be other goods and -- other goods would  
25 be able to be transported at a faster rate, the goods

1 that we're not going to be worried about transporting.  
2 So I'd like to know what goods -- what goods that they  
3 project will increase. Are they the hazardous ones or  
4 are they the non-hazardous ones?

5 So, anyway, I was -- that's about all the  
6 questions I had and comments. Again, I was just very  
7 surprised at the -- for the lack of information that was  
8 given in presenting today. Thank you.

9 HEARING OFFICER BROMLEY: Thank you. Anyone  
10 else? Okay. Last call. Yes, ma'am.

11 MS. YOST: My name is Helen Yost. I spell the  
12 last name Y-o-s-t. I'm here on behalf of at least 300  
13 supporters, Wild Idaho Rising Tide. We're a climate  
14 activist group. I'd also like to incorporate in these  
15 comments much of our writing that we've not yet  
16 submitted to the various agencies but that are available  
17 on our website and on our Facebook pages.

18 We haven't looked extensively into the  
19 application, but when we do we're horrified by what we  
20 see and the possible environmental, social and economic  
21 impacts to not only the Sandpoint area community but the  
22 entire regional community of this project proposed by  
23 BNSF.

24 For decades the Sandpoint-Spokane railroad  
25 funnel community who cherishes and relies on the clean

1 water, air and lands of beautiful Lake Pend Oreille in  
2 north Idaho for our shared economy and life ways has  
3 endured the ongoing dangers and pollution of Burlington  
4 Northern Santa Fe or BNSF Railway. The company hauls 95  
5 percent of the volatile fracked Bakken crude oil, all of  
6 the heavy-metal-laden Powder River Basin coal and many  
7 other toxic substances through this region via its  
8 northwest pipeline on wheels, is what we like to call  
9 it. It spews coal dust and diesel emissions, risks and  
10 degrades the health and safety of resident and visiting  
11 people and wildlife with pollution, noise, hazardous  
12 materials, derailments and accidents, including three  
13 wrecked coal and corn trains within 33 miles of  
14 Sandpoint just last year between March and August 2017.  
15 And over the last 20 years dozens of injures and deaths  
16 of pedestrians, family pets and vehicle drivers and  
17 passengers.

18           Meanwhile, BNSF coerces local state and  
19 national citizens, elected officials and emergency and  
20 regulatory agencies to accept and promote these  
21 escalating abuses of discounted rural and urban rail  
22 line communities advocating the consumer complicity and  
23 corporate conquests that drive gratuitous unjust global  
24 capitalism, basic human rights violations, one of those  
25 being that this project will clearly pollute our

1 drinking water. And, of course, all this adding up to  
2 more pollution and climate change.

3           While BNSF questionably boasts about its local  
4 jobs and monetary incentives, interstate commerce rules  
5 ensure that Idaho receives no state taxes from  
6 transitting trains, none of those trains, by the way,  
7 also stop in Sandpoint to deliver the goods that they  
8 say, you know, we're going to benefit from. Compared to  
9 the origins and destinations of this rail freight,  
10 remote north Idaho gains much less railroad revenue and  
11 employment and supports fewer state track inspectors and  
12 emergency response personnel and equipment. But, of  
13 course, like all greedy industrialists, BNSF now wants  
14 more plunder for profit in spite of the price already  
15 being paid by people and the planet for this perpetually  
16 reinforcing, increasingly destructive expansion of  
17 fossil fuel infrastructure and invasion of our natural  
18 habitat.

19           BNSF is -- I won't tell you their plans. You  
20 already know what they are, so I'll leave that part out.  
21 But we believe this process is essentially -- BNSF is  
22 attempting to avoid, minimize and expedite the required  
23 State and federal permitting and public notice and  
24 participation processes for this project.

25           We would demand an environmental impact

1 statement on this. And I'll go into some of the details  
2 of why we think that there will be potential significant  
3 adverse impacts on environmental quality, endangered  
4 species, regional safety, emergency response, vehicle  
5 traffic flow, noise and pollution levels, recreational  
6 experiences, tourism businesses, economic opportunities  
7 and, of course, our critical lake and aquifer water  
8 resources.

9           First off, the Idaho Department of  
10 Environmental Quality released a report fairly recently  
11 in the last couple years. It found auto high  
12 susceptibility from three main point sources. That  
13 would be the rail lines surrounding and over the lake,  
14 Highway 95 and another unstated spot that's being  
15 mediated. Perhaps it's the black rock slag pile.

16           So BNSF, every time a train crosses this lake,  
17 on average, taking directly from BNSF's numbers, coal  
18 dust and chunks go into the lake. We believe most of  
19 those deposits have landed to the west side of the  
20 current rail bridge over the lake due to prevailing  
21 winds. The strong storm winds blow from the northeast  
22 perpendicular to the bridge. Also the flow of the lake  
23 into the river also pushes everything to the west of  
24 that bridge.

25           BNSF says they want to drill almost a thousand

1 piles into the lake for both a permanent bridge and a  
2 temporary bridge. 700 of those piles are going to be  
3 not only drilled into the lake but removed again. That  
4 causes a ton of sedimentation, water turbidity, even the  
5 bubble curtains that are meant to contain the noise and  
6 the sediment from this pile driving cause even more  
7 turbidity and, of course, that impacts endangered  
8 species.

9           We find it incomprehensible that this project  
10 would move forward with anything but an environmental  
11 impact statement when you are going to be driving piles  
12 into toxic heavy-metal-laden coal deposits in endangered  
13 species habitat. And, of course, the release of those  
14 toxins in those coal deposits are going to directly  
15 impact our water intake supply. By the way, that IDEQ  
16 study was of the Sandpoint Public Works water intake  
17 system in the lake. And, you know, any release of  
18 sedimentation and toxic coal into our water supply is  
19 going to directly impact the health and safety of 9,000  
20 residents in this region that rely on that lake water  
21 for our very lives.

22           It's -- of course the noise is also going to  
23 impact fish. It's going to impact fishermen. For five  
24 miles under water that noise will travel. All the way  
25 down to Dover, all the way up to Oden Bay. This is all

1 in the application. And we believe there's navigational  
2 dangers as well in the construction of this bridge.

3 BNSF has gone to great lengths to line up the  
4 piers of the new bridge with the existing bridge but  
5 they neglect to note that their construction bridge, the  
6 widths between the piers is only half the length of the  
7 existing bridge and the permanent bridge so that people  
8 approaching from, let's say, the City Beach side, from  
9 the east side, and going under the bridge might not see  
10 piers that are in the middle of the existing bridge --  
11 the construction bridge piers.

12 So 43 percent of the Columbia River basin  
13 waters come from our watershed, from the Clark Fork,  
14 Lake Pend Oreille and Pend Oreille River watershed. And  
15 we believe that the pollution impacts mostly from the  
16 construction but also from the ongoing coal that's  
17 coming off these trains going over the bridge and all  
18 the possibilities that a second bridge raises for  
19 increased risks of derailments of hazardous and toxic  
20 substances into our waters. All of this would impact  
21 not only our area but all the waters downstream in the  
22 Columbia Basin.

23 So this has a huge scope, this construction  
24 project. And it needs nothing less than a full  
25 environmental impact statement. And, of course, there's



1 much more I could say, but I thank you for listening and  
2 for your time. And we hope to incorporate even more  
3 details of these comments before the deadline or maybe  
4 not. Thank you.

5 HEARING OFFICER BROMLEY: Thank you, Ms. Yost.  
6 I did see a hand in the back. Please, ma'am. Thank  
7 you.

8 MS. JAMES: Thank you. My name is Anne James.  
9 Anne with an e. J-a-m-e-s.

10 I'm a resident of Pend Oreille County. I live  
11 in Newport, Washington. And I come to Sandpoint two or  
12 three times a week and love this area. I echo other  
13 folks' sentiments in preventing a potential industrial  
14 wasteland, which -- which paints a very bleak picture of  
15 this beautiful area. I support protecting this fragile  
16 ecosystem and support a full and independent EIS. Thank  
17 you.

18 HEARING OFFICER BROMLEY: Thank you. Anyone  
19 else?

20 MR. GEIGER: Good morning.

21 HEARING OFFICER BROMLEY: Good morning.

22 MR. GEIGER: My name's Steve Geiger. Thank  
23 you guys all for being here and giving us this  
24 opportunity.

25 HEARING OFFICER BROMLEY: Would you please

1 spell your last name.

2 MR. GEIGER: G-e-i-g-e-r. And, you know, I've  
3 lived here for 25 years and become very used to the  
4 trains. When I first moved here into Kootenai, the  
5 first night I thought there was a damn earthquake,  
6 actually, because I wasn't used to it from where I came  
7 from. And after a while, you know, I just -- you just  
8 kind of get used to that stuff. And so I don't really  
9 have a problem with the noise or anything.

10 I've heard this stuff about coal dust for many  
11 years. I've talked to many people that do snowshoeing  
12 and stuff around the tracks. They've never seen  
13 anything on the snow at all. I don't know if it's just  
14 a microscopic thing or not. But I just -- I don't see  
15 where there's an issue with that, to be perfectly  
16 honest.

17 I fully support this second bridge. I think  
18 it's been overdue in my opinion. We have stacking  
19 issues. We have wait time issues. We have emergency  
20 access issue. And I would hope that this would all  
21 help. So I think that as you guys go through this  
22 permitting process if -- if that process comes back with  
23 the fact that you would need to do further EIS  
24 assessment then -- then, you know, I think we would all  
25 agree with that. But I think if it comes back that you

1 do not need it, I think that it would just be a lot of  
2 wasted time and money. So I just want to say I'm in  
3 support of this. And thank you for your time.

4 HEARING OFFICER BROMLEY: Thank you,  
5 Mr. Geiger. Anyone else?

6 (Brief pause.)

7 HEARING OFFICER BROMLEY: All right. If there  
8 are no additional comments from the general public then  
9 the way that we had talked about this at the beginning  
10 was to circle back then with BNSF on any reply or  
11 follow-up that it might choose. So BNSF, is there  
12 anything you would like to address now?

13 MR. JONES: Good morning. My name is Matt  
14 Jones with BNSF Railway. The last name is spelled  
15 J-o-n-e-s.

16 I just want to make one very quick comment to  
17 correct one of the earlier comments this morning. The  
18 comment was made that BNSF because of interstate  
19 commerce rules does not pay taxes in Idaho. And that is  
20 incorrect. BNSF, like other companies that operate in  
21 the state of Idaho, pays income tax, property tax, sales  
22 and use and all other applicable taxes. So just wanted  
23 to clarify that point. Thank you very much.

24 HEARING OFFICER BROMLEY: Thank you. Is there  
25 anything else then from BNSF? All right. With that

1 then I've taken all of the public comment. This  
2 hearing -- and the time on the clock on the far wall,  
3 it's approximately 9:34. And I will bring this  
4 morning's session to a close. Thank you. Let's go off  
5 the record.

6 (Whereupon, the public hearing was  
7 concluded at 9:34 a.m.)

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REPORTER'S CERTIFICATE

I, Patricia L. Pullo, Certified Shorthand Reporter, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time any witnesses were placed under oath;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of June, 2018.

\_\_\_\_\_  
PATRICIA L. PULLO, C.S.R. #697  
Notary Public  
816 Sherman Avenue, Suite 7  
Coeur d'Alene, ID 83814

My Commission Expires 11/13/2018.

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