

MEMORANDUM OF UNDERSTANDING
Between
UNITED STATES ARMY CORPS OF ENGINEERS
And
BNSF RAILWAY COMPANY

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish communication protocols and provide a basis for mutually supportive actions between the BNSF Railway Company (BNSF) and the United States Army Corps of Engineers (Corps) consistent with their respective missions and to maintain and improve regulatory consistency and compliance for railroad operations.

This MOU will ensure BNSF is able to fulfill its federal statutory mandate, as a common carrier, to provide freight rail service, while complying with federal environmental regulations for projects under Corps jurisdiction.

Additionally, the adherence to this MOU is intended to reduce the Corps workload through system-wide BNSF regulatory awareness, utilizing Standard Operating Procedures and Best Management Practices to minimize environmental impacts, and utilizing uniform and consistent notification and permit submittals.

II. Goals and Objectives

The goals and objectives of this MOU are to:

1. Improve coordination and communication at all levels (State, District, Division and National) between BNSF and the Corps to increase permit processing efficiency and minimize misunderstandings and misassumptions.
2. Identify specific Corps and BNSF Points-of-Contact (POC's) to maximize communication efficiency and foster cooperative resolution of regulatory issues.
3. Establish BNSF system-wide standard liaison protocols and standard operating procedures for: emergencies; priority activities to avoid emergencies; routine projects and maintenance activities; and major capital expansion projects.
4. Encourage uniformity and consistency in regulation application, management, mitigation and enforcement at all levels to avoid confusing and conflicting interpretations across jurisdictional boundaries. Define

regional permit processing centers for BNSF permits that cross Corps District and Division boundaries.

5. Define future anticipated work on the BNSF railway system and develop District and regional permitting and mitigation strategies to reduce processing times while enhancing environmental protection.

III. Participants

BNSF:

BNSF is the second largest rail carrier in North America with significant infrastructure adjacent to regulated waterways. BNSF's vision and values statement includes assurance for safe and efficient interstate rail service, while being sensitive to the environment by adhering to high legal and ethical standards.

Corps:

Regulatory Program: the Corps works to provide protection of the Nation's aquatic environment, efficient administration of the Corps' regulatory program, and fair and reasonable decision-making for the regulated public.

IV. Statement of Mutual Benefits

The adoption of a BNSF specific review and communications policy provides the opportunity to improve public and private sector service, security, and safety.

BNSF: Streamlined, standardized permit review and jurisdictional determinations

Corps: Reduced staff time and workload, lessons learned for linear projects, increased consistency in decision-making

Public: Reduced environmental impacts and improved public safety

V. Responsibilities

BNSF:

1. BNSF shall develop and utilize standardized submittals, wherever feasible, for notifications, jurisdictional determinations, and permit applications. BNSF will continue to provide internal training to its project managers and consultants to ensure consistency in Corps communications and submittals.

BNSF will continue an internal review process to identify opportunities to minimize permit needs through site evaluation, plan review, and adaptive management that focuses on avoidance of impacts.

2. BNSF will submit permit applications, correspondence and plan documents electronically whenever possible to support the Corps initiative to convert to an electronic environment. Correspondence and applications can then be logged and tracked throughout the review and approval process.
3. BNSF will work with the Corps to develop a definition of the railroad "structure" to be the "railroad support prism" in order to clarify and expedite "Emergency Permitting Procedures" by the Corps. The railroad support prism will be proposed to be defined as "all materials within an area below a 2:1 slope down and outward from a point 2 feet off the end of the rail tie to natural ground."
4. BNSF POC's, Managers of Engineering and other BNSF system representatives, shall communicate and strive to meet on a regular basis with the Corps POC's to ensure continuous clear lines of communication and contact verification.
5. BNSF will work with the railroad industry to encourage coordination with the Corps to develop Regional General Permits (RGPs) for specific railway construction, maintenance, and emergency work.
6. BNSF will develop anticipated scopes of work for track expansion for five and ten years in the future to develop future possible permitting strategies and data acquisition.
7. BNSF will provide the Corps existing spatial data on track right-of-way locations with emphasis on aquatic resources and habitat located within and along rights-of-way.

Corps:

1. The Corps shall recognize the importance of freight rail in the review and processing of submittals. The Corps will assist BNSF in the development review of standardized permit applications materials.
2. The Corps will coordinate with and assist BNSF in developing RGPs for routine maintenance and emergency activities for major portions of their track network. The Corps will make use of the lessons learned in linear projects to work toward the development of RGPs that cross Division boundaries to facilitate standardized applications and procedures across the entire BNSF network.

3. The Corps will include BNSF in notifications for review and clarification of definitions and policy decisions in linear project permitting and mitigation strategies (including pipelines, road, and rail construction projects) including ditch issues (maintenance and relocation), grading, drainage structures, vegetation management, dewatering, location of dredge and fill sites, mitigation and NEPA dredging, filling, etc. BNSF shall provide constructive input on these issues when requested to ensure that unique railroad perspectives are understood and taken into account during policy clarifications.
4. The Corps shall review the BNSF definition of the track and associated railroad support prism as a structure with the goal of providing coordination for the development of the final guidelines for this definition to be adopted within 180 days of the MOU signature.
5. The Corps will use information provided by BNSF in their scope of future work to develop regional permitting strategies using the concepts of linear projects to assign a single permit manager for cross District/Division projects.
6. The Corps will, subject to the availability of funds, provide training to BNSF personnel on jurisdictional issues and permitting authorities to streamline applications and insure increased protection of aquatic resources.

BNSF & Corps:

1. The Corps and BNSF shall jointly work to develop a clear and consistent definition of an “emergency” as it includes the track and associated railroad support prism that meets the requirements of the Corps regulations and the specific circumstances of a railroad track and railroad support prism with a specified immediate threat to their integrity to insure emergency permits are issued where warranted. Procedures for management of non-immediate, yet potentially critical, threats to the integrity of the structure will be defined and utilized by both parties.
2. The Corps and BNSF will use a “Point of Contact” protocol for initial contact regarding jurisdictional matters, and all emergency issue communications and coordination. These “Points of Contact” shall be reviewed each year by both the Corps and the BNSF to ensure they are current, valid, and responsive to the needs of each. To facilitate this communication and coordination concept, a two-tiered team approach will be established as follows:

National Oversight Team:

Co-chairs: BNSF - Mr. R.J. Boileau, AVP-Engineering Services
Corps - Ms. Jennifer Moyer, Senior Regulatory

Program Manager

Members: One senior member each from BNSF and the Corps
from each regional team

Responsibilities: Oversee relationship between BNSF and Corps at all
levels

Oversee regional teams

Develop nationwide permits for railroad projects and
maintenance work

Oversee the joint BNSF/Corps Pilot Program

Serve as the “appeals board” for issues that cannot be
resolved at the regional level

Meet periodically at the call of the co-chairs

Regional Teams (one corresponding to each Corps division office):

Co-chairs: BNSF - Regional Director, Engineering Services
Corps - MSC Regulatory Program Manager (as
selected by the Corps National Co-Chair)

Members: BNSF – Engineering Managers as selected by the
BNSF National Team Co-Chair

Corps – District Regulatory Branch Chiefs or others as
selected by the Corps National Team Co-Chair

Responsibilities: Oversee status of individual permits within the region
and resolve issues arising from them

Manage the joint BNSF/Corps Pilot Program

Direct permitting and mitigation approaches, as
appropriate, for multi-district track expansion projects

Establish teams and approaches to develop guidance
on track, structures, and emergency permitting options

Establish teams and approaches to supervise training
on jurisdiction

Develop Regional Permits for railroad projects and maintenance work

Develop Regional permitting and mitigation strategies for long-term future track work in line with linear project lessons learned, identify lead PM.s for projects.

Manage data sharing as described in paragraph 3 below

Meet periodically at the call of the co-chairs, but not less than twice per year

3. BNSF and the Corps will coordinate in developing and sharing digital information which will provide the location of the BNSF rail lines, other appropriate information available, and Corps jurisdictional boundaries in GIS format to enable common reference points for reviews and web sites. This will allow integration between the two systems and faster permit review as the physical data will be complimentary.

VI. Special Provisions

1. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties of this MOU will be handled in accordance with applicable laws, regulations, and procedures.
2. This MOU may be modified or amended as necessary upon written consent of the parties or may be terminated by either party provided that party provides written notice to the other party within 60 days of such a decision.
3. This Agreement will be reviewed periodically, but not less than bi-annually by the parties. It may be subject to reconsideration at other times as may be required and agreed to by the parties.
4. This MOU becomes effective upon signature by the parties and shall be in force for five years. After the expiration of said five years, this MOU will automatically be extended until either party notifies the other that it wishes to terminate this MOU.
5. Documents, data, maps and other information provided by BNSF pursuant to this MOU may be proprietary or confidential business information or information that is prohibited from disclosure pursuant to applicable law. Such information will only be made available to those in the Corps who have a need for the information in performance of their official duties.

Requests for BNSF information from other Federal agencies will be coordinated with BNSF. For public requests of BNSF information, under the Freedom of Information Act or otherwise, the Corps will notify BNSF and provide BNSF an opportunity to comment on whether the information requested is privileged, confidential, or prohibited from disclosure by applicable law. If BNSF determines that the information is privileged, confidential, or prohibited from disclosure by applicable law, BNSF will explain in detail why the information is privileged, confidential, or prohibited from disclosure by applicable law. The Corps will review the explanation, and if the explanation is reasonable, the Corps will not administratively release the documents.

6. Nothing herein is intended to create any rights in third parties.



Steven L. Stockton, P.E
Director of Civil Works
U.S. Army Corps of Engineers

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David Freeman
VP Engineering
BNSF Railway Company

10/3/2008