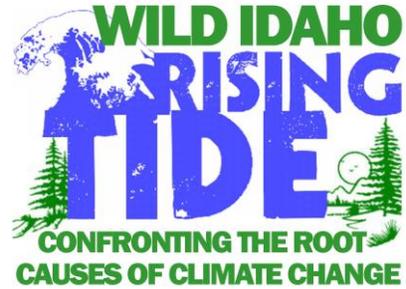


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February 11, 2021

Public Comments Processing
Docket Number FWS-R6-ES-2019-0010
Division of Policy, Performance, and Management
U.S. Fish and Wildlife Service
5275 Leesburg Pike, ABHC-PPM
Falls Church, Virginia 22041-3803

Sent electronically via online message with an attached, PDF letter, as an organizational response at www.regulations.gov

**WIRT Comments on BNSF Railway Incidental Take Permit Application,
Habitat Conservation Plan, & Categorical Exclusion for
Threatened Grizzly Bears in Montana (Docket FWS-R6-ES-2019-0010)**

For the official record of the Burlington Northern Santa Fe (BNSF) Railway incidental take permit application (ITP), habitat conservation plan (HCP), and proposed categorical exclusion (CE) for threatened grizzly bears in Flathead, Glacier, and Lincoln counties, Montana (Docket FWS-R6-ES-2019-0010), I respectfully offer these written comments and accompanying information on behalf of Wild Idaho Rising Tide (WIRT) and its over 3,200 climate activists, members, friends, supporters, and allies, as citizens and residents of Idaho, Montana, Oregon, Washington, and other U.S. states, who own property, work, reside, and/or recreate in or near the surrounding ecosystems and water and air sheds that would be directly, detrimentally affected by U.S. Fish and Wildlife Service (USFWS) and U.S. Department of the Interior (DOI) approval of this ITP, HCP, and CE proposal and associated infrastructure construction and operation by BNSF, the largest rail freight carrier in the United States (U.S.) [1, 2]. We object to this proposal's invasion and significant impacts on affected wildlife and human communities, critical ecosystems, public air, water, land, climate, and monetary resources, and private and public water sources within the area of this BNSF permit and plan, as insufficiently identified and analyzed in the categorical exclusion and accompanying public notices and pertinent government documents offering limited public information, via the [regulations.gov](http://www.regulations.gov) website page on the BNSF proposals [1].

We also oppose this BNSF proposal's significant, direct and indirect, cumulative, adverse impacts on climate change, endangered species, cultural resources, socioeconomic and environmental factors, and reasonable public needs including wildlife, human, and

environmental health and safety, and public and private property values, rights, uses, enjoyment, and insurability. As further public input and information shared with USFWS, we incorporate by reference into these remarks the written and oral comments and linked articles and documents of WIRT and all persons and organizations raising oppositional concerns about this proposal and its applications, documents, and processes relevant to proposal analyses, presented through all local, state, and federal public processes before, during, and after this and extended, USFWS, public comment periods on the BNSF ITP, HCP, and CE, concluding on February 11, 2021.

WIRT earnestly encourages and requests USFWS to: 1) Include these and all of our written objections and enclosed information in the public record for the BNSF ITP, HCP, and CE and related proposal comment periods, 2) Extend this inappropriately brief, public comment period an extra 30 to 90 days, due to past and ongoing, socioeconomic hardships inflicted by the COVID-19 pandemic and experienced by most American citizens, and the still unresolved policy changes instituted for pertinent, federal agencies by President Joe Biden*, 3) Hold open, public hearings in the most proposal-impacted communities, conducted by phone and online, 4) Better assess the regional significance, scope, and precedence of this proposal, through an environmental assessment (EA) or most legally appropriate environmental impact statement (EIS) and their public input processes, 5) Perform a more community-preferred, scientifically rigorous, independent, unbiased, full environmental study examining this controversial proposal, and 6) Reject the current BNSF ITP, HCP, and CE, as a harmful, railroad industry fiasco.

* “The proposal is up for public comment until February 11, although...the transition from Donald Trump’s presidency to Joe Biden’s might influence the agency’s consideration of BNSF’s application. USFWS is under the purview of the Interior Department, and Biden has directed that agency to review some of its recent actions over the coming weeks. It’s unclear if the rail company’s plan is one of them. A USFWS public affairs specialist didn’t respond to an email inquiring whether BNSF’s application for an incidental take permit has been substantively affected by Biden’s order” [3].

Besides urging public participation in comments for this proposal’s ITP, HCP, and CE, WIRT offers these formal remarks drawn from our colleagues’ and our multiple years of experiences, knowledge, and direct interests in this and previous, related, BNSF proposals and reviews considered via local, state, and federal hearings, testimonies, and comment periods. This letter of objection arises from detailed suggestions expressing concerns, provided by a coalition of conservation groups and proposal-impacted stakeholders, whose resistance to this proposal we fully support with these comments, and who previously notified BNSF that they would litigate its routinely deadly activities, and are “prepared to use whatever legal and political advocacy necessary” to oppose permit approval [3-6]. Together, we have identified these problems with the current, BNSF ITP, HCP, and CE analyses and their resulting implementation, which do not properly evaluate wildlife, community, and environmental risks.

WIRT Demands Better Prevention of BNSF Grizzly Kills

On January 12, the U.S. Fish and Wildlife Service (USFWS) opened a 30-day, public comment period on Burlington Northern Santa Fe (BNSF) Railway’s application for an “incidental take permit” (ITP) allowing the company to lawfully kill up to 18 federally protected grizzly bears

during the next seven years [1, 2]. BNSF operates 206 miles of tracks through significant grizzly habitat in the Northern Continental Divide Ecosystem, composed of multiple national forests and Glacier National Park in northern Montana. Trains paralleling Highway 2 have killed or contributed to the deaths of approximately 52 grizzlies since 1980. The Endangered Species Act requires an ITP, which BNSF has never before sought, for killing even one individual of a threatened species like grizzlies.

At an average speed of 35 miles per hour between Whitefish and East Glacier Park, BNSF runs about 1.2 to 1.5 trains per hour, slightly increasing this frequency during the twilight hours when grizzlies feed. Cubs and adult bears have died from direct collisions and/or railroad activities like grain spills and train-killed animals attracting grizzlies to the tracks. But BNSF's standard, business-as-usual application, including a habitat conservation plan, fails to propose any common-sense, substantially changed, business practices, like reduced train speeds or different train schedules that could potentially prevent unnecessary grizzly deaths. Instead, BNSF's application addresses minor mitigation measures and programs to offset predictable, train-caused, grizzly deaths, such as grain spillage cleanup, livestock fencing around tracks, off-site waste management funding, and public and hunter education and fairs.

Moreover, USFWS aims to grant BNSF continued, decades-long impunity to favor profits over wildlife, by considering this grizzly slaughter permit application through a categorical exclusion to the National Environmental Policy Act, which absolves USFWS legal obligations to consider the proposal's environmental impacts, offers minimal environmental analysis, and limits public input and participation in this decision.

Grizzlies Require Better USFWS Protections from BNSF

The U.S. Fish and Wildlife Service must require further, BNSF Railway actions and altered business practices, to protect grizzly bears from its trains and to prevent and reduce grizzly bear deaths on its tracks in Montana. In October 2019, WildEarth Guardians and allies notified BNSF that they intended to sue, due to the continuing deaths of grizzly bears that are protected under the Endangered Species Act. That warning finally spurred BNSF, after years of procrastination, to complete an application for an incidental take permit (ITP) and habitat conservation plan that will not reduce the number of threatened grizzly bears killed by trains.

WIRT is concerned that the proposed ITP, HCP, and CE would permit BNSF to kill 18 threatened grizzly bears in core habitat. BNSF's plan seeks federal permission to kill more grizzly bears and cubs in the next seven years than the railroad has killed in the previous seven years, on and around tracks near Glacier National Park. Such an increase is contrary to the stated purpose of a HCP: to reduce mortality, not increase it. BNSF trains kill many more adult, female than adult, male grizzly bears. When a train kills a female grizzly, her death further compounds losses of potential descendants and future generations of bears. For example, the famous, Greater Yellowstone bear "399" has 24 descendants, but if she had been killed, those descendants would not have helped to populate the Greater Yellowstone region. We urge the Fish and Wildlife Service to reduce, rather than increase, the number of bears that BNSF is allowed to kill.

Such a fatality reduction would be possible, if the Fish and Wildlife Service requires BNSF to take steps that are proven to reduce train-bear collisions. While BNSF seeks to offset the bears it kills by funding offsite conflict prevention, USFWS must require measures to reduce the number of bears killed on and near its tracks. BNSF states that it “believes that the current level of take due to collisions is unavoidable.” But that belief is only based on BNSF’s refusal to take the necessary steps that would avoid collisions.

The obvious and most effective measure is to slow trains in the proposal area, and especially to reduce speeds around blind curves and steep terrain that make escape from trains difficult for bears. But BNSF declines to adopt such measures, despite also acknowledging that “train speed...is dictated by several factors, including but not limited to track features, train scheduling, and fuel efficiency.” This admission reveals that BNSF will slow or speed a train for scheduling purposes, but not to protect threatened grizzly bears from being killed. We ask the Fish and Wildlife Service to require BNSF to reduce train speeds in this HCP area, to protect grizzly bears.

Additionally, BNSF should install warning mechanisms, such as flashing lights and repetitive sounds, to warn bears when trains are approaching, and should study the efficacy of such methods. Railroads have researched and applied similar measures in Canada, where trains are a major cause of grizzly bear mortality in Banff National Park. Finally, all “minimization measures” should apply to the entire 206 miles of track covered by the HCP. BNSF proposes to only take “minimization measures” on 160 miles of track. Since 2017, BNSF trains killed three bears outside of the 160 miles where BNSF plans to take some “minimization measures.” BNSF must take these and better measures on all tracks where it has killed grizzly bears, not only where trains killed bears prior to 2017.

WIRT activists recommend that the U.S. Fish and Wildlife Service dismiss BNSF’s misleading claims in this proposal, and require additional impact evaluations and a more rigorous analysis through a revised EA or EIS, responsive to citizen and hearing input, which would more accurately account for the proposal’s significant impacts. During this decisive, proposal review phase, we ask that USFWS consider and act in accordance with our and our colleagues’ letters of objection that substantively address the deficiencies of BNSF’s documents and processes, as we offer the counterbalance of regional insights so crucial to government and community protection of wildlife, wild places, and watersheds essential to lives and livelihoods. For the previously stated and other commenters’ reasons, please reject this BNSF proposal, and ultimately deny its application permit.

Thank you for the opportunity to comment and for accepting these remarks on the proposed incidental take permit (ITP) and associated habitat conservation plan (HCP) and categorical exclusion (CE) for Burlington Northern Santa Fe (BNSF) Railway, published in the Federal Register on January 11, 2021. Our input intends both to improve the BNSF proposal and to advocate for justifiably anticipated, USFWS rejection of this BNSF scheme to further impose risks on Montana and Northwest wildlife and citizens, while reaping the benefits of exploitation of rail line communities and environments. We are sending these comments via www.regulations.gov, with reference to Docket Number FWS-R6-ES-2019-0010.

/s/ Helen Yost, MSEE
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[1] *Incidental Take Permit Application; Habitat Conservation Plan and Categorical Exclusion for the Threatened Grizzly Bear; Flathead, Glacier, and Lincoln Counties, Montana*, January 11, 2021 U.S. Fish and Wildlife Service
<https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=FWS-R6-ES-2019-0010>

[2] *Public Invited to Comment on BNSF Railway Permit Application for Incidental Take of Grizzly Bears*, January 11, 2021 U.S. Fish and Wildlife Service
<https://www.fws.gov/mountain-prairie/pressrel/2021/01112021-Public-Invited-Comment-BNSF-Railway-Permit-Application-Incidental-Take-Grizzly-Bears.php>

[3] *Death on the Tracks*, February 1, 2021 Montana Free Press
<https://montanafreepress.org/2021/02/01/death-on-the-tracks>

[4] *Advocates Secure New Railroad Proposal for Grizzlies in Northern Montana*, January 11, 2021 WildEarth Guardians
<https://wildearthguardians.org/press-releases/advocates-secure-new-railroad-proposal-for-grizzlies-in-northern-montana>

[5] *Burlington Northern Seeks Federal Permission to Continue Killing Grizzlies in Montana*, January 13, 2021 WildEarth Guardians
<https://wildearthguardians.org/press-releases/burlington-northern-seeks-federal-permission-to-continue-killing-grizzlies-in-montana>

[6] *Urge the Fish and Wildlife Service to Require BNSF to Do More to Prevent Grizzly Bear Deaths*, WildEarth Guardians
<https://secure.wildearthguardians.org/site/Advocacy?cmd=display&page=UserAction&id=1128>