

STATE OF MONTANA, NATURAL RESOURCE DAMAGE PROGRAM



SENT VIA E-MAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

November 20, 2023

Joseph M. Racicot, President
Montana Rail Link, Inc.
P.O. Box 16390
101 International Drive
Missoula, Montana 59808
Email: jracicot@mtrail.com

Brooke Kuhl, Legal Counsel
BNSF Railway Company
201 Railroad St W Ste 300
Missoula, MT 59802-4252
Email: Brooke.Kuhl@BNSF.com

Re: Notice of Intent and Invitation to Participate in Cooperative Assessment for Reed Point Bridge Derailment (also referred to as Stillwater Train Derailment)

Dear Mr. Racicot and Ms. Kuhl:

Based on information collected during the preassessment phase for the Reed Point Bridge Derailment (also referred to by the Unified Command as Stillwater Train Derailment), in accordance with the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*, (OPA) Natural Resource Damage Assessments (NRDA) regulations at 15 CFR Part 990, Subpart D, the Montana Natural Resource Damage Program (NRDP) has determined that it is appropriate to conduct restoration planning in accordance with 15 C.F.R. Part 990, Subpart E; OPA, and the Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 *et seq.*, MCA, (CECRA). The details of this determination and the associated findings are contained in the enclosed Notice of Intent to Conduct Restoration Planning.

NRDP is formally notifying Montana Rail Link (MRL) and BNSF Railway Company (BNSF) of the opportunity to participate in the development of the type and scope of Assessment Plan(s) and subsequently in the performance of the assessment. NRDP is also inviting you to enter into a cooperative assessment agreement with the Trustee. The cooperative assessment approach

provides several benefits to the potentially responsible party, the Trustee, and the public, such as increased efficiency, reduced transaction costs, and a focus on restoration. The public will be encouraged to provide input into the assessment process, including reviewing and commenting on the development of the Assessment Plan(s), as well as any restoration proposals developed pursuant to the NRDA Regulations. Should your company decide to participate in a cooperative assessment, the process would be governed by a funding and participation agreement negotiated between participating potentially responsible parties and NRDP.

As provided in 15 C.F.R. 990.14(c), we would like to work with MRL and BNSF cooperatively in the NRDA process. To ensure that we have a successful cooperative natural resource damage assessment, we will require that:

1. MRL and/or BNSF enter into a second funding participation agreement with NRDP that meets the requirements of 15 C.F.R. Part 990, Subpart E; OPA; and CECRA by **January 31, 2024**.
2. The funding participation agreement must include a clear process and time frame for NRDP to receive (related to the Reed Point Bridge Derailment):
 - a. all data collected or received by MRL and/or BNSF;
 - b. all information submitted by the public through the rpderailment@mtrail.com or other email;
 - c. All updated SCAT maps; and
 - d. Adequate notification from MRL and/or BNSF prior to collecting additional samples or information.
3. NRDP anticipates that the existing funding participation agreement will cover all of NRDP's costs to negotiate the next phase of funding but would not be used for assessment costs without modification by the parties. If a second phase funding participation agreement is entered into, the parties will close out the first agreement. Please let us know in writing if MRL and/or BNSF see any concerns with this approach.
4. NRDP is evaluating whether there is a need to collect ephemeral human use data. If we determine that it is appropriate to collect this data, we anticipate it being covered by the current funding participation agreement. We will plan to share information with MRL and BNSF as we are developing any such survey prior to implementing it. Please let us know in writing if MRL and/or BNSF see any concerns with this approach.

We look forward to working cooperatively with Montana Rail Link and/or BNSF Railway Company. **Please let us know in writing within 30 days whether you would like to participate in the natural resource damage assessment as provided in this letter.** As part of this response, please let us know whether you would prefer NRDP to provide the initial draft of such an agreement or whether you intend to provide a draft to NRDP. **As noted above, NRDP would like a funding participation agreement in place by January 31, 2024.**

Please contact Katherine Hausrath at khausrath@mt.gov or (406) 422-3679 to confirm participation and to begin work on the funding participation agreement.

Sincerely,



Douglas H. Martin
Interim Program Director
Montana Natural Resource Damage Program

cc:

Becky Summerville, Montana Rail Link, bsummerville@mtresourcesinc.com

Devin Clary, Montana Rail Link, dclary@mtrail.com

Craig Trueblood, BNSF Railway Company, craig.trueblood@klgates.com

Sydney Stewart, NRDP

Katherine Hausrath, NRDP

Pat Cunneen, NRDP

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Enc.

Notice of Intent to Conduct Restoration Planning