



FORB – Friends of the Rail Bridge

Established 2018 | Burleigh & Morton County | (701)220-4513
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February 8, 2022

Brian L. Dunn
Chief, Office of Bridge Programs
Commandant (CG-BRG)
U.S. Coast Guard STOP 7509
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7509

Sent by email with enclosures to: Brian.Dunn@uscg.mil

Re: Response to Bismarck Rail Bridge Dispute Resolution January 28, 2022, Meeting Minutes

Dear Mr. Dunn:

Thank you for the January 28, 2022, meeting with representatives of Friends of the Rail Bridge (FORB) regarding the Bismarck Bridge Programmatic Agreement (PA) Dispute Resolution and providing meeting minutes. In the email transmitting the minutes you requested “if any of the points related to the PA raised by FORB in your January 27 email are still unresolved, the Coast Guard asks that FORB address their concern by citing specific points in the PA and send them to me by next Tuesday, February 8. This will allow us to focus on the exact parts of the PA in order to fully understand and address the areas of dispute.”

In addition, during the meeting you said, “This is a privately owned resource [emphasis mine] where the Coast Guard either issues a permit or not. If this was a publicly owned project, this might be an entirely different situation.”

On page 6 of the PA, BNSF claims ownership of the Bismarck Bridge in stipulation II.C.3. The private ownership of this historic property is a primary reason the U.S. Coast Guard claims it cannot address the issues FORB raised in the January 28 dispute resolution meeting. In response, FORB researched legal ownership of the bridge after the meeting. The results of the research conducted by Board member Lyle Witham, former North Dakota Assistant Attorney General, summarized in the enclosed memorandum reveal the bridge piers and the attached bridge superstructure, are publicly owned by the State of North Dakota and not BNSF.

Here are our findings in brief:

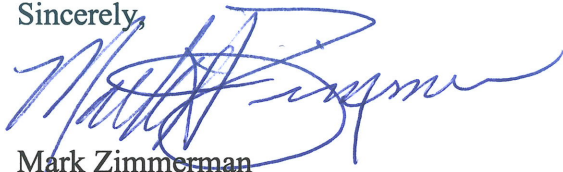
1. In 1864 the U.S. Congress chartered the Northern Pacific Railroad granting it 40 sections per mile of land through Dakota Territory to facilitate construction of a railroad.

2. In doing so Congress held in trust navigable rivers to the ordinary high-water mark and underlying riverbeds for a future state (Equal Footing and Public Trust Doctrines).
3. In 1880-1883 the Northern Pacific built the Bismarck Railroad Bridge substructure sinking the piers deep into the Missouri River riverbed and affixing it to the land.
4. In 1889 North Dakota became a state and the U.S. transferred ownership of navigable waters in the Missouri River and its riverbed.
5. Under both federal and State common law, as well as North Dakota statutory law, fixtures that are part of the real property are transferred with the land, thus ownership of the Bismarck Rail Bridge was transferred to the State of North Dakota on November 2, 1889.
6. *North Dakota Century Code 55-02-07* protects significant properties on state land, which cannot be destroyed without approval of the State Historical Board.

Given this information, it appears that BNSF has misrepresented its ownership of the Bismarck Rail Bridge in the PA, in consulting party meetings, and in the Draft Environmental Impact Statement issued by the U.S. Coast Guard. As lead federal agency responsible for compliance with Section 106 of the National Historic Preservation Act, the U.S. Coast Guard must consider that the Bismarck Bridge is a publicly owned resource thus making this “an entirely different situation.”

We look forward to discussing this matter in another dispute resolution meeting. We hope our concerns about destruction of a publicly owned historic property will be taken seriously and be addressed properly under the National Historic Preservation Act, the National Environmental Policy Act, and North Dakota state law.

Sincerely,



Mark Zimmerman
President of FORB

Enclosure: Memorandum regarding ownership of the Bismarck Rail Bridge

cc with encl:

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