

**SURFACE TRANSPORTATION BOARD ADDRESSES FEDERAL PREEMPTION OF
LOCAL, STATE PERMITTING AUTHORITY OVER MODERNIZATION OF BURLINGTON
NORTHERN'S "STAMPEDE PASS" RAILROAD LINE**

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Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision addressing a petition filed by the Cities of Auburn and Kent, Washington. The Cities had asked the Board to find that federal law does not preempt the need to obtain various local and state environmental, building, and land use permits for improvements associated with the Burlington Northern Railroad Company's Now, The Burlington Northern and Santa Fe Railway Company. (BN's) modernization of its Stampede Pass railroad line in the State of Washington. The Cities' petition, in essence, was for reconsideration of the Board's earlier *King County King County, WA — Petition for Declaratory Order — Burlington Northern Railroad Company — Stampede Pass Line*, STB Finance Docket No. 33095, issued to the public September 25, 1996. decision.

In its decision, the Board explained its role, and what it views as the appropriate role of state and local regulation, in regulating BN's reactivation of the Stampede Pass line. The Board found that the ICC Termination Act of 1995 (ICCTA), to the maximum extent permitted by the U.S. Constitution, preempts the need for state and local permits relating to the reconstruction and reopening of the Stampede Pass line. At the same time, the Board acknowledged that state and local entities have important roles to play under various federal statutes, including environmental statutes. The Board made it clear that nothing in its decision was intended to interfere with the role of the states and local entities in implementing those federal

laws. The Board also noted that there are certain areas with respect to railroad activity that are reasonably within the local authorities' jurisdiction and are not preempted. (For example, a local government could issue citations or seek damages if harmful substances were discharged during a railroad construction project.) However, the Board concluded that any local or state approval process for BN's upgrading of the Stampede Pass line would go too far and was preempted. The Board issued its decision in *Cities of Auburn and Kent, WA--Petition for Declaratory Order--Burlington Northern Railroad Company--Stampede Pass Line*, STB Finance Docket No. 33200.

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