

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	DEPOSE
15-NOV-2022	
Erin Livingstone	
VANCOUVER, BC	1

Court File No. A-255-22

FEDERAL COURT OF APPEAL

BETWEEN:

BNSF RAILWAY COMPANY

Appellant

- and -

**GREATER VANCOUVER WATER DISTRICT,
CANADIAN NATIONAL RAILWAY COMPANY and
CANADIAN TRANSPORTATION AGENCY**

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at CF Pacific Centre, 701 West Georgia Street, Vancouver, British Columbia, V7Y 1K8.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: November 15, 2022

Issued by: _____
(Registry Officer)

Address of local office: Federal Court of Appeal
CF Pacific Centre
701 West Georgia Street
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To: The Administrator
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And To: Greater Vancouver Water District
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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from Decision No. 102-R-2022 of the Canadian Transportation Agency dated August 18, 2022.

THE APPELLANT ASKS that:

- (a) the appeal be allowed;
- (b) Decision No. 102-R-2022 of the Canadian Transportation Agency dated August 18, 2022, be quashed or set aside;
- (c) it be awarded its costs of the appeal, including the costs of the motion dated September 19, 2022, from the respondent, Greater Vancouver Water District (the "District");
- (d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

- (a) the Canadian Transportation Agency (the "Agency") erred in interpreting the statutory definition of the term "utility crossing" in s. 10 of the *Canada Transportation Act*, S.C. 1996, c. 10 (the "CTA") as including a utility line that does not pass over or under a railway line;
- (b) the Agency erred in interpreting the definition of the term "railway line" in the statutory definition of "utility crossing" in s. 100 of the CTA as including a right of way;
- (c) the Agency erred in interpreting the terms "...maintain..." and "...reconstruct, maintain and repair..." in an agreement between the appellant, BNSF Railway Company, and the District, dated September 1, 1979, as not encompassing or including the rerouting works being proposed by the District.

Date: November 15, 2022



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