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SERVICE DATE – MAY 25, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No 414X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
MODOC AND SISKIYOU COUNTIES, CA

Decided: May 24, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR Subpart F-Exemption Abandonments to abandon and discontinue service over a 33.77-mile line of railroad between milepost 0.00, near Lookout, and milepost 33.77, near Hambone, in Modoc and Siskiyou Counties, CA. Notice of the exemption was served and published in the Federal Register on May 21, 2004 (69 FR 29347).

On June 21, 2004, a decision and notice of interim trail use or abandonment was served that reopened the proceeding to implement interim trail use/rail banking for the entire line under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), and provided a 180-day period for Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way in this proceeding. In the same decision, the exemption was made subject to the conditions that: (1) prior to beginning salvage activities, BNSF consult with the Forest Service to determine if additional documentation is needed to determine if the Bald Eagle inhabits the project area and, if so, whether the Bald Eagle would be impacted by salvage activities and, if salvage activities extend beyond the right-of-way, to determine if any threaten, endangered and sensitive plant species would be impacted by salvage activities; (2) prior to beginning salvage activities, BNSF consult with the California Regional Water Quality Control Board to determine if a Construction Storm Water Permit is required and consult with the U.S. Army Corps of Engineers to determine if a permit is required; (3) prior to beginning salvage activities, BNSF submit site forms and the final cultural resources report for the property to the State Historical Society of North Dakota (SHPO); and (4) BNSF consult with the Nation Geodetic Survey (NGS) and provide NGS with 90 day's notice prior to disturbing or destroying the identified marker to plan for its relocation.¹

¹ The June 21, 2004 decision stated that RTC had 180 days from the June 22, 2004 effective date of the exemption (until December 19, 2004) to reach an interim trail use/rail banking agreement. As of this date, the Board has no record stating whether an interim trail use agreement has been reached by BNSF and RTC. On April 14, 2005, BNSF filed a request to extend the consummation due date until December 31, 2005. By decision served April 29, 2005, the consummation deadline was extended to December 31, 2005.

On April 22, 2005, BNSF filed a letter requesting that the section 106 historic preservation condition be removed. In support of its request, BNSF submitted a letter from SHPO indicating that so long as nine archaeological sites are avoided during project activities, it concurs with the finding of No Historic Properties Affected. Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition be removed. Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.²

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the June 21, 2004 decision is removed.
3. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary

² The other three conditions imposed in the June 21, 2004 decision remain in effect.