

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 450X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN CLAY COUNTY, MO

Decided: September 13, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.06-mile line of railroad between milepost 199.07 and milepost 200.13, in Kearney, in Clay County, MO (Line). Notice of the exemption was served and published in the Federal Register on August 15, 2007 (72 FR 45865). The exemption is scheduled to become effective on September 14, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 20, 2007. In the EA, SEA noted that the Missouri Department of Natural Resources (MDNR) Water Protection Program (MDNR-WPP) has indicated that it could not determine whether the proposed action would require a General Permit for Land Disturbance for the National Pollutant Discharge Elimination System (NPDES) Program. However, it did specify that the permit requirement would be triggered if the action resulted in land disturbance, including removal of topsoil, of more than one acre. Conversely, a permit would not be needed if the action were limited to the removal of track and ties. In addition, SEA received correspondence from MDNR, Solid Waste Management Program (MDNR-SWMP). In its letter, MDNR-SWMP commented that the area of the proposed abandonment may contain previously unidentified hazardous waste or other materials from spills, particularly near loading and switch areas. MDNR-SWMP further commented that lead from lead-based paint could be problematic on bridges and other structures associated with the rail line. MDNR-SWMP recommends that the site be inspected prior to salvage to ensure proper handling of any contaminated materials. Therefore, SEA recommends that BNSF be required, prior to commencement of any salvage activities, or prior to consummation of the abandonment if the rail line has already been completely salvaged, to consult with MDNR to ensure that any outstanding issues are addressed.

Also, SEA in the EA states that, although BNSF indicates that there are no structures on the line 50 years or older, the MDNR, State Historic Preservation Office (SHPO) contends that there is a moderate to high potential for the presence of archaeological sites near and within the area of the proposed abandonment. The SHPO, therefore, requests that BNSF prepare and submit an archaeological survey prior to abandonment. Because the SHPO has not completed its evaluation of the potential impact of this project on archaeological resources, SEA recommends that BNSF retain its interest in and take no steps to alter the historic integrity of all sites and

structures on the right-of-way that are eligible for listing or listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). BNSF shall report to SEA the results of any consultations with the SHPO and any other consulting parties. Once SEA has completed the section 106 process and the Board has removed this condition, BNSF may file its consummation notice with the Board and initiate salvage activities.

Comments to the EA were due by September 5, 2007. In an email received on August 30, 2007, the National Geodetic Survey stated that no geodetic station markers were found within the area of the proposed abandonment.

Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, 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 exemption of abandonment of the line described above is subject to the conditions that: (1) in order to ensure appropriate consideration of MDNR's comments regarding stormwater issues and the possible need for a NPDES permit, and the concern for potential contamination on the right-of-way, BNSF shall consult with MDNR prior to commencement of any salvage activities, or prior to consummation of the abandonment, if the line has been completely salvaged; and (2) BNSF shall, (a) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed, (b) report to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and (c) not file its consummation notice or initiate salvage activities until the section 106 process has been completed and the Board has removed this condition.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary