

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 445X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN CASCADE  
COUNTY, MONT.

Decided: December 28, 2010

BNSF Railway Company (BNSF) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.67 miles of railroad between milepost 194.61 and milepost 196.28, near Great Falls, in Cascade County, Mont. Notice of the exemption was served and published in the Federal Register on October 6, 2006 (71 Fed. Reg. 59,196-97). The exemption was scheduled to become effective on November 8, 2006.

By decision served November 7, 2006, the proceeding was reopened at the request of the Board's Office of Environmental Analysis (OEA)<sup>1</sup> and the exemption was made subject to 3 conditions. One of the conditions (condition no. 3), a historic preservation condition, required BNSF to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or have been listed in the National Register of Historic Places (National Register) (generally, sites, buildings, or structures 50 years old or older) until the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, has been completed. This condition also required that BNSF shall report to OEA regarding any consultations with the Montana Department of Environmental Quality (MDEQ) and any other Section 106 consulting parties, and that BNSF may not file its consummation notice or initiate any salvage activities related to the proposed abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition. In this decision, the historic preservation condition will be removed.<sup>2</sup>

In a supplement to the final EA, OEA states that, in April 2007, BNSF submitted a cultural resources survey report to the Montana Historical Society (SHPO) and OEA. According to OEA, the report was prepared at the SHPO's request, and on behalf of BNSF and OEA, to determine if the proposed abandonment would likely affect any historic properties eligible for or listed on the National Register within the Area of Potential Effect. The survey report indicates

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<sup>1</sup> Previously the Section of Environmental Analysis, or SEA.

<sup>2</sup> The 2 other conditions require BNSF to consult with the U.S. Army Corps of Engineers and MDEQ prior to engaging in further salvage activities. OEA recommends that these conditions remain in effect.

that the Cascade County portion of the line had been previously recorded as Site 24CA264, which is the Lewistown to Great Falls Branch Line. The survey report describes Site 24CA264 as being potentially eligible for listing on the National Register under Criterion A, B, C, and D. However, the survey report indicates that the portion of Site 24CA264 within the Area of Potential Effect has been subject to a number of actions that have severely compromised the site's integrity of association and setting. These actions include the previous salvage of rail, the removal of a railroad bridge, the installation of a sewer main, the dumping of trash, and the expansion of residential properties into the right-of-way. Combined, these actions have negatively altered the integrity of the portion of the site within the Area of Potential Effect. Therefore, the survey report concludes that the segment of Site 24CA264 within the Area of Potential Effect is a non-contributing portion of the National Register eligible property, and that the undertaking would have no effect on historic properties.

OEA further states that, after issuance of the 2007 survey report, no additional Section 106 materials were submitted to the Board by BNSF, the SHPO, or any other party until August 17, 2010, when BNSF provided a draft copy of a Memorandum of Agreement (MOA) it had negotiated with the SHPO and the City of Great Falls. BNSF requested that OEA review the draft MOA, suggest any changes and, in the absence of any comments, sign the MOA. OEA states that, before reviewing the MOA it reviewed the implementing regulations of the NHPA and noted that an MOA is not required until there has been a determination that the proposed undertaking would have an adverse effect on historic properties. OEA indicates that, as of this date, neither it nor the SHPO has made such a determination. OEA adds that, in light of the 2007 survey report, it does not believe that historic properties would be affected by the proposed abandonment.

OEA states that, in a September 22, 2010 letter to the SHPO, it made a determination of "no historic properties affected" for this undertaking. OEA further states that, on October 13, 2010, the SHPO concurred with its determination and that OEA has therefore determined that a MOA is no longer necessary and that the Section 106 process has been concluded.

Therefore, based on the information provided, OEA states that this completes the Section 106 process and recommends that the Section 106 condition be removed. Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This action 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 November 7, 2006 decision is removed.

3. This decision is effective on its service date.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.