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SERVICE DATE – JANUARY 25, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34003

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY–CONSTRUCTION AND OPERATION EXEMPTION–SEADRIFT AND
KAMEY, TX

Decided: January 23, 2002

By decision served on June 19, 2001 (June 19 decision),¹ we conditionally approved an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for The Burlington Northern and Santa Fe Railway Company (BNSF) to construct and operate an approximately 7½-mile line of railroad between Seadrift and Kamey, TX. The proposed line will connect with an industrial complex of the Union Carbide Corporation at Seadrift and with the former Southern Pacific Transportation Company line, now owned by Union Pacific Railroad Company, between Placedo and Port Lavaca, TX, near Kamey. We stated that, upon completion of the environmental review process, we would issue a final decision addressing the environmental impacts of the proposal and, if appropriate, make the exemption effective at that time.

An environmental assessment (EA) prepared by our Section of Environmental Analysis (SEA) was served on September 17, 2001. In the EA, SEA preliminarily concluded that, based on the information provided from all sources as of the date of the EA and its independent analysis, the construction and operation of BNSF's proposed rail line would not significantly affect the quality of the human environment, if the 26 mitigation measures recommended in the EA were imposed. Comments on the EA were due on October 17, 2001.

Comments were filed by: the U.S. Army Corps of Engineers–Galveston District; Texas Department of Transportation; Texas Historical Commission; U.S. Department of the Interior, Fish and Wildlife Service; Texas Parks and Wildlife Department (TPWD); Texas Department of Agriculture; Texas Coastal Coordination Council; Texas Natural Resource Conservation Commission; Golden Crescent Regional Planning Commission; Calhoun County Drainage District No. 11; and BNSF. After considering the comments to the EA, SEA recommended modification of mitigation measures 16 (pertaining to water resources) and 18 (pertaining to biological resources). With respect to biological resources, SEA also recommended, as

¹ Notice was published in the Federal Register on June 19, 2001 (66 FR 32980).

suggested by TPWD, the addition of a new condition 19 to minimize the loss of fencerow habitat. (The remaining conditions were renumbered.)

We will adopt SEA's final recommended environmental mitigation measures, as set forth in the Appendix to this decision, and impose them as a condition to the exemption. By letter filed on November 1, 2001, and served on all parties of record, BNSF requests that, upon completion of the environmental review, we make our final decision authorizing the construction effective on the date of service, if appropriate. Because we have received no opposition to this request and BNSF has requested expedition, we will allow the exemption, as conditioned, to become effective immediately.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. We adopt the environmental mitigation measures set forth in the Appendix to this decision, and we impose them as a condition to the exemption granted in this proceeding.

2. The exemption conditionally approved in the June 19 decision is effective on the date of service of this decision, subject to the condition that BNSF comply with the mitigation measures adopted in this decision with respect to the construction and operation of the involved rail line.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

APPENDIX

ENVIRONMENTAL MITIGATION MEASURES:

Land Use and Zoning

1. BNSF shall limit ground disturbance to only the areas necessary for project-related construction activities.
2. BNSF shall ensure that all areas disturbed by project-related construction activities which are not located on the railroad's property (such as access roads, haul roads, crane pads, and borrow pits) are promptly restored as closely to their original condition as is practical following conclusion of project-related construction activities at that site.
3. BNSF shall commence reclamation of disturbed areas, as soon as practicable, after project-related construction ends along a particular stretch of rail line. The goal of reclamation shall be the rapid and permanent reestablishment of ground cover on disturbed areas. BNSF shall monitor reclaimed areas for 1 year and shall reseed vegetative cover as necessary.

Transportation Systems

4. BNSF shall coordinate at-grade crossing construction with the Texas Department of Transportation (TxDOT) and Calhoun County in order to minimize traffic delay during crossing construction. BNSF shall use appropriate signs and barricades to control traffic disruptions during construction.
5. During project-related construction of the at-grade crossings at Boyd Road and Sikes Road, BNSF shall allow for the movement of emergency vehicles and other vehicles either by flagging, temporary detours or bypasses as may be required by the roadway authority having jurisdiction.
6. BNSF shall maintain new grade crossing warning devices according to Federal Railroad Administration (FRA) track safety standards (49 CFR Part 213).

Safety

7. In undertaking project-related construction activities, BNSF shall use construction materials, construction standards, and safety practices which either conform to BNSF standards or which are recommended by the American Railway Engineering and Maintenance of Way Association. BNSF shall inspect and maintain the track in compliance with FRA standards.

8. As agreed to by BNSF, the public at-grade crossings at Boyd Road and Sikes Road will be equipped with active warning devices, subject to the direction and approval of TxDOT.
9. BNSF shall develop internal emergency response plans for construction to allow for agencies and individuals to be notified in case of an emergency. BNSF shall provide the emergency response plans for construction to state and local entities. BNSF shall provide local emergency response organizations with the schedule for construction throughout the project area, including the sequence of construction of grade crossings.
10. BNSF shall notify the National Response Center, the Texas Natural Resource Conservation Commission (TNRCC), and the appropriate state department of natural resources in the event of a reportable hazardous material release with the potential to affect wetlands or wildlife habitat(s).
11. BNSF shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). BNSF shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans. In the case of a hazardous material incident, BNSF shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

12. BNSF shall obtain all necessary Federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, or streams or if these activities would cause soil or other materials to wash into these water resources. BNSF shall use appropriate techniques to minimize impacts to water bodies and wetlands.
13. As agreed to by BNSF, it shall work with the local drainage district to provide appropriate access to BNSF property as may be needed for maintenance of the Coloma Creek drainage channel.
14. To minimize sedimentation into water bodies, BNSF shall use Best Management Practices, such as silt screens and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during project-related construction. BNSF shall disturb the smallest area practicable around any waterway, and shall consult with the U.S. Department of Agriculture's Natural Resource Conservation Service, the Texas Parks and Wildlife Department (TPWD), TNRCC, and TxDOT to ensure proper revegetation of disturbed areas as soon as possible following construction activities related to this project.
15. For right-of-way maintenance, for those instances in which BNSF uses contractors to apply herbicides, BNSF shall use only contractors trained in herbicide application and

shall require those contractors to follow label directions in applying herbicides. BNSF shall also require those contractors to use only herbicides registered for such use with the U.S. Environmental Protection Agency and to follow all applicable state regulations regarding the use of those herbicides. BNSF shall ensure that herbicides are applied in such a manner as to minimize the amount potentially entering waterways.

16. BNSF shall establish staging areas for project-related construction equipment in areas that are not near water bodies, whenever practicable. When project-related construction activities, such as culverts and bridge work require work in stream beds, BNSF shall conduct these activities, to the extent possible, during low flow periods. If construction activities will result in the disturbance of waterbodies, BNSF, as required, shall obtain the required permit from the TPWD under Chapter 86 of the Parks and Wildlife Code prior to the initiation of any construction activities.
17. BNSF shall regularly inspect and maintain culverts and bridge abutments to avoid potential flooding and stream flow alteration. BNSF shall design all project-related drainage structures to pass a 100-year flood.

Biological Resources

18. BNSF shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. In response to the comment from the U.S. Department of the Interior, Fish and Wildlife Service, once the rail line is constructed, BNSF shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion, utilizing native grass and forb species. BNSF shall monitor such planting for 1 year and revegetate the areas as necessary to prevent erosion and the invasion of non-native species. If erosion develops, BNSF shall take steps to develop other appropriate erosion control procedures.
19. In response to the comment from the TPWD, BNSF shall, to the extent practicable, mitigate the loss of fencerow habitat in agricultural areas by seeding native plant species within the right-of-way along the relocated fencerows. Also, BNSF shall, to the extent practicable, utilize existing rights-of-way to minimize impacts to fish and wildlife habitat.

Air Quality

20. BNSF shall comply with all applicable Federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

21. BNSF shall maintain project-related construction and maintenance vehicles in good working order with properly functioning mufflers to control air emissions.

Noise and Vibration

22. BNSF shall control temporary noise from construction equipment through the use and maintenance of muffler systems on machinery.
23. BNSF shall comply with FRA regulations (49 CFR Part 210) establishing decibel limits for train operations.

Cultural Resources

24. If previously undiscovered archaeological remains are found during construction, BNSF shall cease work and immediately contact the Texas Historical Commission regarding appropriate measures to protect the resource.

Community Relations

25. BNSF shall establish a Community Liaison to consult with landowners and agencies for a period of 1 year following start-up of operations on the new rail line. BNSF shall also provide the name and phone number of the Community Liaison to appropriate local officials.
26. As agreed to by BNSF, it shall continue to maintain communications with the community through the Community Advisory Panel and Near Neighbor organization prior to and throughout construction activities to keep local officials informed of the project status.
27. BNSF shall provide its construction schedule to affected farmers and ranchers to allow them to determine whether they should continue to crop or graze right-of-way areas or discontinue such activities due to impending construction activities related to this project.