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SERVICE DATE – FEBRUARY 15, 2008

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 14, 2008

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 became effective on September 14, 2007.

By decision served on September 13, 2007 (September 2007 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that: (1) in order to ensure appropriate consideration of the Missouri Department of Natural Resources (MDNR) comments regarding stormwater issues and the possible need for a National Pollutant Discharge Elimination System 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 (National Register) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed, (b) report to SEA regarding any consultations with the MDNR, State Historic Preservation Office (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.

E-mails exchanged between BNSF and MDNR in November and December 2007 indicate that the required consultation between BNSF and MDNR relating to the stormwater issues and the possible need for a National Pollutant Discharge Elimination System permit, and the concern for potential contamination on the right-of-way, has been addressed. Based on this information, SEA has determined that BNSF has fulfilled its agency consultation requirements. Therefore, SEA recommends that the condition pertaining to stormwater and potential contamination on the right-of-way be removed.

By letter filed on November 29, 2007, BNSF requests removal of the section 106 historic preservation condition imposed in the September 2007 decision. BNSF attaches to its letter

correspondence from the SHPO wherein the SHPO indicates that a thorough and adequate cultural resources survey has been conducted of the project area and that there will be no historic properties affected. SHPO also states that, in the event that cultural materials are encountered during project activities, all construction should be halted, and the SHPO notified as soon as possible in order to determine the appropriate course of action.

Pursuant to the section 106 regulations of the NHPA at 36 CFR 800.5(b), and following consultations with the SHPO, SEA has determined that the proposed abandonment would have no adverse effect on the line because it is not eligible for listing in the National Register. Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition imposed in the September 2007 decision be removed.

Accordingly, the proceeding will be reopened and the previously imposed conditions 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 two conditions imposed in the September 2007 decision are removed.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary