

36729
DO

SERVICE DATE – MARCH 3, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 436X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
PARK COUNTY, WY

Decided: March 2, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.11-mile line of railroad between milepost 42.59 and milepost 42.70, near Cody, in Park County, WY. Notice of the exemption was served and published in the Federal Register on February 2, 2006 (71 FR 5734). The exemption is scheduled to become effective on March 4, 2006.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 7, 2006. In the EA, SEA states that the United States Department of the Army, Corps of Engineers, Omaha District (Corps) is concerned that National Wetlands Inventory maps or other resources may not have been consulted to determine the presence or absence of wetlands in the proposed abandonment area. If abandonment activities involve any work in waters of the United States, a Corps permit may be required. Therefore, SEA recommends that BNSF be required to consult with the Corps’ Wyoming Regulatory Office prior to commencement of salvage activities regarding possible Corps permitting requirements.

SEA also states in the EA that the United States Department of Interior, Fish and Wildlife Service Wyoming Field Office (USFWS) has determined that two threatened species, the Bald Eagle (*Haliaeetus leucocephalus*) and the Ute ladies’-tresses (*Spiranthes diluvialis*), which may require specific protective measures in accordance with the Endangered Species Act, may be present in or near the project area. USFWS also indicates that specific protective measures may be appropriate for migratory birds in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Accordingly, USFWS suggests the avoidance and minimization of impacts to any wetland areas, stream channels, and surrounding vegetation to the greatest extent possible. Therefore, SEA recommends that BNSF be required to consult with USFWS prior to commencement of salvage activities to determine possible impacts to species of Federal concern.

Finally, SEA states in the EA that, while the Wyoming State Historic Preservation Office (SHPO) has stated that the proposed abandonment will have no adverse effect on historic properties listed in or eligible for inclusion in the National Register of Historic Places, the SHPO is concerned that salvage operations could harm cultural materials found on the right-of-way. Therefore, SEA recommends that BNSF be required, if any cultural materials are discovered during salvage operations, to halt work immediately, contact SEA, and have the materials evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 22716, Sept. 1983).

Comments to the EA were due by February 22, 2006. No comments were received by the due date. Accordingly, the conditions recommended by the SEA in the EA will be imposed.

As conditioned, 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 exemption of the abandonment of the rail line described above is subject to the conditions that BNSF shall: (1) consult with the Corps' Wyoming Regulatory Office prior to commencement of salvage activities regarding possible Corps permitting requirements; (2) consult with USFWS prior to commencement of any salvage activities to determine possible impacts to species of Federal concern; and (3) if any cultural materials are discovered during salvage operations, halt work immediately, contact SEA, and have the materials evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 22716, Sept. 1983).
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary