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SERVICE DATE – MAY 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 457X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN STEVENS COUNTY,
MN

Decided: May 28, 2008

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a rail line between mileposts 86.00 and 86.65, in Morris, Stevens County, MN, a distance of 0.65 miles. Notice of the exemption was served and published in the Federal Register on September 5, 2007 (72 FR 51006-07). The exemption became effective on October 5, 2007.

By decision served October 4, 2007 (October 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 two environmental conditions requiring BNSF to: (1) consult with the United States Fish and Wildlife Service (USFWS) regarding any impacts on Federally listed threatened or endangered species if any salvage activities or ground disturbance occurs along the right-of-way as a result of the proposed abandonment;¹ and (2)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) 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, and (b) report back to SEA regarding any consultations with The Minnesota State Historic Preservation Office (MNSHPO), Tribal Historic Preservation Office (if on tribal lands), any other section 106 consulting parties, and the public. BNSF may not file its consummation notice or initiate any salvage activities until the section 106 process has been completed and the Board has removed this condition.

In a post environmental assessment, SEA now states that a Memorandum of Agreement (MOA) has been signed by SEA, MNSHPO, and BNSF.² Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition be removed.

¹ This consultation condition does not include a reporting requirement and does not have to be removed.

² A MOA demonstrates that the Board has taken into account the effects of the abandonment on historic resources in satisfaction of the requirements under NHPA. Therefore, in accordance with 36 CFR 800.4(d), the Board's responsibilities under section 106 are fulfilled.

Accordingly, this proceeding will be reopened and the previously imposed historic preservation condition will be removed.

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 section 106 historic preservation condition imposed in the October 2007 decision is 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