

35922
SEA

SERVICE DATE – JUNE 24, 2005

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-6 (Sub-No. 428X)

BNSF Railway Company – Abandonment Exemption – in Colfax County, NM

BACKGROUND

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad between milepost 0.00 near French, New Mexico and milepost 36.90 near York Canyon, New Mexico. The rail line proposed for abandonment extends approximately 36.90 miles in Colfax County, New Mexico. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to BNSF, no local traffic has moved over the line for at least two years and there is no overhead traffic to be rerouted.

BNSF states that the area surrounding the line is rural in nature and there are no towns along the right-of-way, which varies in width from 150 to 200 feet. BNSF states that, according to the New Mexico Department of Economic Development, Colfax County has a population of 14,051, within 3,768 square miles. French, Colfax and York Canyon are railroad stations along the right-of-way, and York Canyon is the site of an inactive coal mine. The adjoining real estate, according to BNSF, varies from rangeland to hilly.

According to BNSF, there are no bridges that are 50 years old or older in the immediate area of the proposed abandonment. The line contains nine culverts that are 50 years old or older.

ENVIRONMENTAL REVIEW

BNSF submitted an environmental and historic report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental and historic report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR

1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

As stated above, no local traffic has moved on the line segment for at least two years. BNSF states that there are no longer any economically recoverable coal resources along the line. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Safety

According to BNSF, there are 29 public crossings and 31 private crossings along the line. BNSF states that precautions would be taken during salvage operations, if any may be required, to ensure public safety, and salvage contractors would be required to satisfy all applicable health and safety laws and regulations. Accordingly, we will recommend a condition requiring BNSF to conduct salvage operations in the manner it has proposed.

Water Resources

The U.S. Army Corps of Engineers (Corps) has submitted comments stating that the rail line proposed for abandonment is located in several waterways and includes nine structures. The Corps states that waterway crossing removal activities, including any bank and channel reshaping or stabilization, may include discharges of dredged and fill material into jurisdictional waters of the United States, including wetlands. Although the environmental and historic report provided by BNSF to the Corps did not contain a specific description of the proposed salvage methods, the Corps states that BNSF provided information to the Corps via telephone indicating that the project would include the removal of bridges and culverts. According to the Corps, the removal of culverts and their surrounding earth may require reshaping of the stream bed and banks, including a discharge of dredged and fill material into waters of the United States.

The Corps states that stream bed and bank re-shaping activities are regulated under the provisions of Section 404 of the Clean Water Act, unless specifically exempt. Thus, the Corps believes that a Section 404 permit would be required for the project unless salvage activities are exempt or do not include discharge of dredged or fill material into waters of the United States. The Corps indicates that it needs additional information to determine specific permitting requirements, and that if a Section 404 permit is required, Section 401 water quality certification would be required from the appropriate water quality authority. Accordingly, we will recommend a condition requiring BNSF, prior to beginning salvage activities, to consult further with the Corps regarding its requirements, to comply with the reasonable requirements of the Corps, and to submit the results of this consultation to SEA.

The Colfax County Floodplain Manager has submitted comments indicating that some of the proposed abandonment lays in Zone A of the floodplain designated on the Flood Insurance

Rate Maps. Zone A refers to areas of the 100-year floodplain where base elevations and flood hazard factors are not determined. Other areas of the line are in either Zone C or Zone D, which are designated as areas of minimal flooding and areas of undetermined, but possible, flood hazards. According to the County Floodplain Manager, further study would probably have to be made to determine if the proposed abandonment would affect the 100-year floodplain. Accordingly, we will recommend a condition requiring BNSF to consult with the Colfax County Floodplain Administrator prior to beginning salvage activities regarding impacts to the 100-year floodplain and to comply with the reasonable requirements of the Floodplain Administrator to mitigate any potential impacts.

The New Mexico Environment Department (NMED) submitted comments stating that the U.S. Environmental Protection Agency (USEPA) requires a National Pollutant Discharge Elimination System (NPDES) Construction General Permit for projects that would result in disturbance of one or more acres of land. This permit would require that a Storm Water Pollution Prevention Plan be prepared for the site and that appropriate Best Management Practices be installed and maintained during and after salvage activities to prevent, to the extent practicable, pollutants in storm water runoff from entering waters of the United States.

BNSF states that it believes that an NPDES permit would not be required because salvage activities would only involve removal of rails and ties with no disturbance of roadbed, and would disturb less than one acre of land. BNSF also states that it would require its salvage contractors to take every measure and precaution to ensure that no pollutant would be discharged into surface waters during salvage activities. However, we recommend that a condition be imposed requiring BNSF, prior to beginning salvage activities, to consult with USEPA and NMED regarding NPDES requirements for BNSF's final salvage plans and to report the results of this consultation to SEA.

Biological Resources

The U.S. Fish and Wildlife Service (FWS) submitted comments stating that several Federally listed endangered and threatened species and species of concern exist in Colfax County. The endangered species include the Black-footed ferret (*Mustela nigripes*) and the Southwestern willow flycatcher (*Empidonax traillii extimus*). The threatened species include the Bald eagle (*Haliaeetus leucocephalus*), the Mexican spotted owl (*Strix occidentalis lucida*), the Piping plover (*Charadrius melodus*), and the Arkansas River shiner (*Notropis girardi*). The species of concern include the Black-tailed prairie dog (*Cynomys ludovicianus*), the New Mexican meadow jumping mouse (*Zapus hudsonius luteus*), the Swift fox (*Vulpes velox*), the American peregrine falcon (*Falco peregrinus anatum*), the Arctic peregrine falcon (*Falco peregrinus tundrius*), the Baird's sparrow (*Ammodramus bairdii*), the Black tern (*Chlidonias niger*), the Mountain plover (*Charadrius montanus*), the Northern goshawk (*Accipiter gentilis*), the Western burrowing owl (*Athene cunicularia hypugea*), the Yellow-billed cuckoo (*Coccyzus americanus*), the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*), and the Dwarf milkweed (*Asclepias uncialis* var. *uncialisa*).

FWS recommends that if the project area has suitable habitat for the listed endangered or threatened species, species-specific surveys should be conducted at appropriate times to determine whether a listed species may be affected. If any listed species may be affected, consultation with the FWS pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536 (ESA) would be required. While the species of concern have no legal protection under the ESA, FWS recommends that these species also be included in any surveys that may be conducted.

FWS also recommends that the Corps be contacted regarding permitting requirements under Section 404 of the Clean Water Act if salvage activities could impact floodplains or wetlands, and that these habitats should be conserved through avoidance or mitigated to ensure no net loss of wetlands function and value. As discussed above, BNSF contacted the Corps and the Corps has submitted comments.

In addition, FWS recommends that salvage activities occur outside the general migratory bird nesting season of March through August to minimize the likelihood of adverse impacts to all birds protected under the Migratory Bird Treaty Act, or that areas proposed for salvage activities during the nesting season be surveyed, and when occupied, avoided until nesting is complete.

FWS also suggests that the New Mexico Department of Game and Fish (DGF) and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division (EMNRD) be contacted for information regarding fish, wildlife, and plants of state concern.

DGF submitted comments stating that it does not anticipate significant impacts to wildlife or sensitive habitats. We have included EMNRD on the service list for this proceeding to ensure that it receives a copy of this environmental assessment (EA).

Based on the comments of FWS, we recommend that a condition be imposed requiring BNSF to consult with FWS prior to beginning salvage activities and to conduct no abandonment or salvage activities until completion of the Section 7 process of the ESA.

Comments from Other Agencies

The Natural Resources Conservation Service (NRCS) submitted a letter stating that it has no comments on the proposed abandonment.

The National Geodetic Survey (NGS) has submitted comments stating that 14 geodetic station markers have been identified that may be affected by the proposed abandonment and requests 90 days notification in advance of activities that will disturb or destroy these markers to plan for their relocation. Accordingly, we will recommend a condition requiring BNSF to notify NGS 90 days prior to beginning salvage activities to plan for the possible relocation of the station markers by NGS.

The Bureau of Land Management (BLM) submitted comments stating that there is no BLM land along the line proposed for abandonment. New Mexico State Parks has submitted comments stating that no state park facilities exist within the project area.

The Colfax County Board of Commissioners (Colfax) submitted comments stating that the proposed abandonment would be an agenda item for discussion at the Colfax County Commission meeting on June 14, 2005, and that Colfax would forward any comments or questions regarding the abandonment to SEA after the meeting.

HISTORIC REVIEW

BNSF served the environmental and historic report on the New Mexico Historic Preservation Division (State Historic Preservation Officer or SHPO), pursuant to 49 CFR 1105.8(c). The SHPO has submitted comments stating that the nine culverts on the line and the rail line itself are potentially eligible for listing in the National Register of Historic Places (National Register) under Criterion A of the National Register for their association with mining in York Canyon.

In a phone conversation with SEA on June 14, 2005, Mr. John Murphey of the SHPO's office indicated that the comments his office submitted were preliminary comments based on secondary sources, and his office has requested additional information from BNSF to better identify the eligibility of the rail line for the National Register. Because consultation efforts between BNSF, the SHPO and SEA are ongoing, we recommend a condition requiring BNSF to take no steps to alter the historic integrity of the line and all sites and structure on the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

During the phone conversation with Mr. Murphey, SEA also requested information regarding whether any Native American Indian tribes need to be contacted. Mr. Murphey directed SEA to the SHPO's website, which contains a county-by-county working list for determining which tribes have an interest in participating in the environmental review process and a list of contact information for these tribes. According to this list, the Comanche Indian Tribe, the Kiowa Tribe, the Jicarilla Apache Nation, and the Taos Pueblo are the four Federally recognized tribes that wish to participate in the environmental review process for projects in Colfax County. Accordingly, we have included these tribes on the service list for this proceeding to ensure that they receive a copy of this EA. SEA specifically invites comments from these tribes and requests them to inform SEA as to whether they wish to participate as consulting parties to the Section 106 process.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

1. **As agreed to by BNSF Railway Company (BNSF), BNSF shall take precautions during salvage operations to ensure public safety, and shall ensure that salvage contractors satisfy all applicable health and safety laws and regulations.**
2. **BNSF Railway Company shall, prior to beginning salvage activities, consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements, comply with the reasonable requirements of the Corps, and submit the results of this consultation to the Section of Environmental Analysis.**
3. **BNSF Railway Company shall consult with the Colfax County Floodplain Administrator prior to beginning salvage activities regarding impacts to the 100-year floodplain and shall comply with the reasonable requirements of the Floodplain Administrator to mitigate any potential impacts.**
4. **BNSF Railway Company (BNSF) shall, prior to beginning salvage activities, consult with the U.S. Environmental Protection Agency and the New Mexico Environment Department regarding National Pollution Discharge Elimination System requirements for BNSF's final salvage plans and shall report the results of this consultation to the Section of Environmental Analysis.**
5. **BNSF Railway Company shall consult with the U.S. Fish and Wildlife Service regarding impacts to Federally listed threatened and endangered species prior to beginning salvage activities and shall conduct no abandonment or salvage activities until completion of the Section 7 process of the Endangered Species Act, 16 U.S.C. 1536.**
6. **BNSF Railway Company shall notify the National Geodetic Survey (NGS) 90 days prior to beginning salvage activities to plan for the possible relocation of the salvage markers by NGS.**
7. **BNSF Railway Company shall retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.**

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by

another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 428X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Rini Ghosh, the environmental contact for this case, by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at ghoshr@stb.dot.gov.

Date made available to the public: June 24, 2005.

Comment due date: July 11, 2005.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment