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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 408X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN HAMILTON AND
MERRICK COUNTIES, NE

Decided: October 7, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 15.60-mile line of railroad between BNSF milepost 1.90, near Aurora, and milepost 17.50, near Central City, in Hamilton and Merrick Counties, NE. Notice of the exemption was served and published in the Federal Register on March 22, 2004 (69 FR 13349-50). The exemption became effective on May 31, 2004.

By decision served on April 21, 2004 (April 2004 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA). In accordance with the recommendations in SEA's environmental assessment (EA), the exemption was made subject to the conditions that BNSF shall: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; (2) consult with the Nebraska Department of Environmental Quality (NE DEQ) to determine if a stormwater general permit is required; (3) consult with the U.S. Fish and Wildlife Service, Nebraska Field Office (USFWS) (a) if salvage activities are planned in the vicinity of the BNSF Platte River bridge during the Federally threatened piping plover and endangered least tern nesting season, which is from April 15 through August 15, to determine if these species will be affected; (b) pursuant to the provisions of the Migratory Bird Treaty Act, 16 U.S.C. 703-12, if the proposed abandonment project is planned during the nesting season, or at any other time that may result in the taking of nesting migratory birds, so that a qualified biologist can conduct a field survey during the nesting season to determine the presence of nesting migratory birds, and document and maintain on file for potential review by USFWS the results of the field surveys, along with information regarding the qualifications of the biologist(s) performing the surveys; and (c) regarding the potential impacts that the proposed abandonment might have on aquatic habitats, streams, and riparian habitats; (4) consult with the Nebraska Game and Parks Commission (NGPC) (a) before beginning any salvage activities that may adversely affect the following Federally threatened or endangered species: bald eagles; interior least tern; piping plover; and whooping crane, and regarding the recommendation that a survey be conducted on those species; (b) to determine the potential impacts of the abandonment to the whooping cranes and sandhill cranes, requiring BNSF to restrict salvage activities to before or after the spring migration, which is from February 15 to April 15, and to suspend salvage activities if whooping

cranes are sighted in the wetlands, but permitting BNSF to resume salvage activities once the cranes have left the area; and (c) concerning the removal and salvage methods used when storing construction equipment, mitigation practices to be used during salvage activities to avoid soil erosion, and the revegetation of the right-of-way with certain flora; and (5) contact the Nebraska State Historical Society (the State Historic Preservation Office or SHPO) immediately if any archaeological remains are uncovered during the project activities.

SEA received additional comments from USFWS, as a result of consultations with BNSF, during which BNSF stated that it intended to remove all bridges and structures on the right-of-way, including the bridge that runs over the Platte River. There was no indication in BNSF's environmental and historic report that it had planned to remove the bridges as part of salvage activities. Accordingly, SEA requested that BNSF provide Federal, state, and local agencies with a description of its plans to remove the bridge that runs over the Platte River, as well as notice that salvage of the rail line would include removal of all track materials, rails, ties, bridges, and structures on the right-of-way. Based on the information received from USFWS and BNSF, SEA now recommends that the condition regarding USFWS be modified to read as follows: To address USFWS' concern regarding the Federally endangered least tern and the Federally threatened piping plover, if any salvage activities related to the removal of the bridge spanning the Platte River are carried out during those species' nesting season, which is from April 15 to August 15, then nesting surveys shall be conducted by a qualified biologist on riverine areas within .25 miles upstream and downstream of the project site. If a nest is observed within .25 miles of the bridge removal site, all salvage activities shall stop pending additional consultation with USFWS and SEA. USFWS will exempt the need for nest surveys within the project area if there are no flows in the river due to drought conditions. Additionally, SEA recommends that a condition be added requiring BNSF to conduct salvage activities in accordance with the measures recommended by USFWS regarding bridge pilings, abutments, and bank stabilization structures.¹ USFWS states that the proposed project will not adversely affect Federally listed threatened and endangered species or their critical habitat if BNSF carries out salvage activities in accordance with these measures.

In compliance with the consultation conditions imposed in the April 2004 decision, BNSF informed SEA that, with respect to the concerns raised by NGPC regarding endangered species that nest between February 15 and April 15, salvage activities are not planned during this nesting period. According to BNSF, in the event that salvage activities do take place between February 15 and April 15, NGPC will send a representative to observe the area for nests. Based on this information, SEA now recommends that the previous consultation condition with NGPC be modified to read as follows: To address NGPC's concerns regarding the Federally threatened and endangered bald eagle, interior least tern, piping plover, and whooping crane, BNSF shall restrict salvage activities to before or after the spring migration, which is from February 15 to

¹ The recommended measures are: completely remove bridge pilings and abutments or, if this is not possible, cut bridge pilings and abutments to below the river bed surface elevation, and completely remove bank stabilization structures, including rip-rap.

April 15, but if salvage activities must occur during this period, BNSF shall arrange for a representative from NGPC to observe the area for any nests prior to commencement of salvage activities. In addition, BNSF shall suspend salvage activities if whooping cranes are sighted in the wetlands. Salvage activities may be resumed once the cranes have left the area. Accordingly, the new condition recommended by SEA, as a result of the information received from USFWS and BNSF, will be imposed. In addition, many of the conditions previously imposed in the April 2004 decision have been satisfied. Accordingly, those conditions will be modified and replaced with new conditions as set forth in the ordering paragraphs.

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. This proceeding is reopened.
2. Upon reconsideration, the conditions previously imposed in the April 2004 decision are modified and shall be replaced with the following conditions requiring BNSF to: (1) contact the Nebraska SHPO immediately if any archaeological remains are uncovered during salvage activities along the rail right-of-way; (2) consult with USFWS if any salvage activities related to the removal of the bridge spanning the Platte River would be carried out during the nesting season (from April 15 to August 15) of either the Federally endangered least tern or the Federally threatened piping plover, arrange for nesting surveys to be conducted by a qualified biologist on riverine areas within .25 miles upstream and downstream of the project site, and terminate all salvage activities if a nest is observed within .25 miles of the bridge removal site, pending additional consultation with the USFWS and SEA; (3) completely remove bridge pilings and abutments or, if this is not possible, cut bridge pilings and abutments to below the river bed surface elevation, and completely remove bank stabilization structures, including rip-rap; and (4) restrict salvage activities to before or after the spring migration (from February 15 to April 15) of the Federally threatened and endangered bald eagle, interior least tern, piping plover, and whooping crane, but if salvage activities must occur during this time period, BNSF shall arrange for a representative from NGPC to observe the area for any nests prior to commencement of salvage activities, and shall suspend salvage activities if whooping cranes are sighted in the wetlands, but may resume salvage activities once the cranes have left the area.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary