

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 6 (Sub-No. 477X)

BNSF Railway Company—Abandonment Exemption—in Los Angeles County, Cal.

BACKGROUND

In this proceeding, BNSF Railway Company (BNSF) filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon a rail freight service easement over an approximately 4.85-mile rail line owned by Los Angeles County Metropolitan Transportation Authority (LACMTA) in Los Angeles County, California. The line extends between milepost 119.35, just east of the San Gabriel River in Irwindale, and milepost 124.20, east of the Santa Anita Boulevard grade crossing in Arcadia. A map depicting the line in relationship to the area served is appended to this Environmental Assessment (EA).

A summary of prior proceedings involving the line is provided below. In addition, this EA explains the scope of the Board's environmental review in rail line abandonments and assesses the potential environmental impacts associated with BNSF's proposed abandonment of its rail freight service easement. The EA concludes with the environmental mitigation measures that we are recommending to the Surface Transportation Board (Board), as well as information on how and when to submit comments on this EA.

As discussed in more detail below, any subsequent reuse of the right of way is beyond the scope of the Board's environmental review in this abandonment proceeding.

Related Prior Proceedings

The line proposed for abandonment is part of a group of lines that were subject to a 1992 agreement between the Atchison, Topeka and Santa Fe Railway Company (ATSF)¹ and Los Angeles County Transportation Commission (LACTC), a predecessor of LACMTA. Under that agreement, LACTC acquired ownership of the physical assets of certain ATSF rail lines, as well as the right to direct ATSF's future disposition of these lines. ATSF retained an exclusive and permanent easement to continue providing freight common carrier service over the lines.

¹ ATSF later merged with Burlington Northern Railroad Company to become the Burlington Northern and Santa Fe Railway Company, which is now known as BNSF.

5 years later, LACMTA sought a blanket exemption from the Board, asking that it be released from the requirements of the Interstate Commerce Act at 49 U.S.C. Subtitle IV. LACMTA sought this exemption because it did not intend to operate any rail lines as a rail freight common carrier and had no wish to hold itself out to provide freight rail service on the rail lines it had acquired from ATSF.² The Board granted LACMTA the blanket exemption in 1997, and further stated in its decision that, if the railroad sought to abandon its rail freight service obligation over the line at a future date, the Board would evaluate the potential environmental impacts of the abandonment at that time.³

While the physical assets of the line remain in the ownership of LACMTA, BNSF's responsibility to provide rail freight service over the line remains in effect. Now, BNSF has come before the Board seeking to abandon its rail freight service easement over the line.

ENVIRONMENTAL REVIEW

Railroads require prior approval from the Board to permanently abandon or discontinue service over rail lines that are part of the interstate rail network,⁴ and under the National Environmental Policy Act of 1969 (NEPA),⁵ the Board must consider potential environmental impacts before issuing a final decision that authorizes, denies, or approves the proposed action with conditions (including environmental mitigation conditions).⁶ The Board's Office of Environmental Analysis (OEA) assists the agency in meeting its responsibilities under NEPA by conducting an independent environmental review of cases filed with the Board, preparing the necessary environmental documentation associated with that review, and providing recommendations and technical advice to the Board on environmental matters.

To assist OEA in its review, the railroad seeking abandonment authority must prepare Environmental and Historic Reports that set forth information regarding the proposed abandonment and show that the railroad has consulted with appropriate agencies in order to

² See Orange County Transportation Authority, Riverside County Transportation Commission, San Bernadino Associated Governments, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Co., FD 32173 at 4 (STB served Mar. 12, 1997) (Orange County).

³ LACTMA agreed to adopt any Environmental and Historic Reports filed by the railroad. See Orange County at 6.

⁴ 49 U.S.C. § 10903; 49 C.F.R. § 1152.

⁵ 42 U.S.C. §§ 4321-43.

⁶ The Board's environmental regulations implementing NEPA are set forth at 49 C.F.R. § 1105.

address environmental issues or historic preservation concerns.⁷ BNSF submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the proposed abandonment, and BNSF served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules at 49 C.F.R. § 1105.7(b).⁸ OEA has reviewed and investigated the record in this proceeding.

Diversion of Traffic

BNSF states that there are no shippers located on the line, and no freight service has moved over the line for at least 2 years.⁹ In addition, because the line is stub ended, there is no overhead traffic on the line.¹⁰ Accordingly, the proposed abandonment would not result in the diversion of freight traffic to other transportation systems or modes, and it 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.

Salvage Activities

The right of way is generally 50 feet wide from the centerline of track, and the line passes through industrial and residential areas of Los Angeles County. Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right of way, and regrading of the right of way. Salvage may be performed within the right of way or, if necessary, via the construction of new access points to the right of way. Because BNSF has no ownership interest in any fixed assets on the line, it will not undertake any salvage operations in connection with the proposed abandonment. BNSF has stated that, if the Board grants it abandonment authority, LACMTA would undertake salvage activities. Any mitigation measures recommended in this EA and imposed by the Board will require BNSF to ensure that salvage takes place according to the conditions required.

⁷ See 49 C.F.R. §§ 1105.7(e) and 1105.8(d).

⁸ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 6 (Sub-No. 477X).

⁹ BNSF indicates that the line qualifies for the Board's class exemption for abandonment of an out-of-service line under the Board's regulations, but BNSF filed a petition for exemption to abandon the line (rather than a notice of exemption) in order to request an exemption from the Offer of Financial Assistance (OFA) provisions.

¹⁰ BNSF states in its Environmental Report that the line has been used for storing empty freight cars, which will now be stored in other locations.

Following abandonment of the line, LACMTA plans to use the corridor to extend its current light rail service eastward to Azusa, California.¹¹ However, as explained in more detail below, post-abandonment use of the right of way is beyond the scope of this EA. OEA understands that the environmental impacts of the Metro Gold Line Extension Project have been assessed in an environmental review conducted pursuant to the laws of the State of California.

The National Geodetic Survey did not identify any geodetic station markers in the area of the proposed abandonment. Accordingly, no geodetic station markers would be affected by the proposed abandonment.

BNSF states that there are no known hazardous waste sites or sites where known hazardous material spills have occurred on the right of way. In addition, the line does not pass through a coastal zone, state parks or forests, national parks or forests, or wildlife sanctuaries. Therefore, no adverse effects on a coastal zone, wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated in connection with the proposed abandonment.

The proposed abandonment would not impact prime farmland or any farmland protection efforts in the area. However, we are recommending that BNSF ensure that best management practices are followed during salvage activities to prevent erosion.

The U.S. Army Corps of Engineers (Corps) has not commented on the proposed abandonment. However, the bridge located at milepost 119.40 crosses the San Gabriel River. Accordingly, we are recommending that BNSF consult with the Corps regarding the abandonment's potential impacts to the San Gabriel River and, if applicable, comply with any reasonable requirements. We are also recommending that BNSF report the results of these consultations in writing to OEA prior to the onset of salvage operations.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts if the environmental mitigation recommended in the EA is imposed and implemented. The potential future plans for extending light rail service on this property are not part of the Board's consideration in the environmental review for this abandonment,¹² and OEA does not recommend environmental conditions regarding the post-abandonment use of a right of way. Moreover, any potential environmental impacts related to the light rail project would be addressed in the appropriate permitting process for those activities.

¹¹ This light rail project is known by a number of names, but for the purpose of this EA, it will be referred to as the Metro Gold Line Extension Project.

¹² Iowa Southern R. Co.—Exemption—Abandonment, 5 I.C.C.2d 496, 501(1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

Other Comments

U.S. Senator Dianne Feinstein, U.S. Congressmember Judy Chu, the City of Arcadia, the City of Azusa, the City of Duarte, and the City of Monrovia submitted comments in support of the proposed abandonment so that the planned light rail project can move forward. In general, these comments expressed support for the Metro Gold Line Extension Project, which they believe would ease traffic congestion, create jobs, serve as stimulus for economic development in the area, and connect Los Angeles County with regional destinations such as the City of Hope National Medical Center.¹³

The Board has also received a number of comments from property owners who object to the proposed abandonment. Mount Olive Storage LLC (Mount Olive Storage) states that it owns land in Duarte that is adjacent to the line, and it has an easement from this land for the purpose of rail ingress and egress to the line, which it has used for the storage of rail cars. Mount Olive Storage objects to the proposed abandonment, because it believes that the proposed abandonment would adversely affect the future use and value of its property.

In addition, the Silverstein Law Firm submitted comments on behalf of Excalibur Property Holdings LLC (Excalibur) and George Brokate, who have ownership interests in the City of Monrovia. These property owners do not own any portion of the right of way that is the subject of this abandonment proceeding, but Excalibur and Mr. Brokate state that they will be “significantly and adversely affected” by the light rail project, “of which [the expected] BNSF Petition for Abandonment is a part.” Specifically, they believe that Metro Gold Line Foothill Extension Construction Authority (Construction Authority)¹⁴ intends to use the power of eminent domain to take their property for the construction of a maintenance and operations facility (M&O Facility) associated with the planned light rail project.

Construction Authority has conducted an environmental review of the proposed light rail project and prepared an Environmental Impact Report and a Supplemental Environmental Impact Report (SEIR) pursuant to the California Environmental Quality Act (CEQA). Excalibur and Mr. Brokate are currently challenging the SEIR in California state court.¹⁵ It appears that the property owners are seeking to invalidate the SEIR for alleged violations of CEQA and CEQA guidelines, such as improper project and alternatives analysis. For this reason, Excalibur and Mr. Brokate claim that no action should be taken regarding BNSF’s petition for abandonment until complete resolution of the litigation.

¹³ The City of Duarte stated that the City of Hope National Medical Center is a research center, hospital, and graduate medical school that employs approximately 3,500 people.

¹⁴ Construction Authority is an independent transportation planning, design and construction agency created in 1998 by the California State Legislature.

¹⁵ Excalibur Property Holdings LLC v. Pasadena Metro Blue Line Construction Authority, Los Angeles County Superior Court Case No. BS130732 (Filed Feb. 17, 2011).

The objections expressed by Excalibur and Mr. Brokate are specific to the CEQA review and potential reuse of the line. In response, we note that the Board's environmental review of BNSF's proposed abandonment under NEPA is separate and independent from the state environmental review of the light rail extension project and associated M&O Facility. While BNSF included portions of the SEIR with its environmental filing to the Board, this information appeared to be included as background, and OEA did not rely on the information contained in the SEIR. The information in the railroad's Environmental and Historic Reports, along with OEA's verification of this information, provided the basis for the environmental review in this abandonment proceeding.

For environmental reviews of rail line abandonments, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency. This includes the diversion of traffic to other rail lines or transportation modes and the consequences of removing the track and related structures.¹⁶ In conducting its own independent review of the proposed abandonment, OEA took into consideration the line's location in a heavily developed and urban area, as well as the fact that the proposed abandonment would not result in the diversion of freight traffic to other transportation systems or modes, and determined that it would not result in significant environmental impacts if the environmental mitigation recommended in the EA is imposed and implemented.

Excalibur and Mr. Brokate also object to the planned light rail project because they believe it is inconsistent with the City of Monrovia General Plan. In response to their concerns regarding the proposed abandonment and its consistency with local land use plans, we note that the City of Monrovia submitted comments stating that it supports the proposed abandonment, which is consistent with the City's land use regulations.

HISTORIC REVIEW

BNSF served the Historic Report on the California Office of Historic Preservation (the State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). There are 6 bridges on the line that are 50 years old or older¹⁷ and, if abandonment authority is granted, the right of way would remain in state ownership. Because the SHPO has not submitted comments on BNSF's proposed abandonment, OEA has not been able to consider the SHPO's opinion before determining whether the proposed project could affect historic properties. Accordingly, we are recommending a condition requiring BNSF to 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) eligible for listing or listed in the National Register until completion of the Section 106 process. Guidance regarding the

¹⁶ Iowa Southern R. Co. – Exemption – Abandonment, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

¹⁷ These bridges were constructed between 1903 and 1942.

Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.¹⁸ The database identified no federally-recognized tribes in Los Angeles County.

CONDITIONS

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

1. BNSF Railway Company shall ensure that best management practices during are followed during salvage activities to prevent erosion.
2. Prior to commencement of any salvage activities, BNSF Railway Company (BNSF) shall consult with the U.S. Army Corps of Engineers (Corps) regarding the abandonment's potential impacts to the San Gabriel River and, if applicable, comply with any reasonable requirements. BNSF shall report the results of these consultations in writing to the Board's Office of Environmental Analysis prior to the onset of salvage operations.
3. BNSF Railway Company (BNSF) shall 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. BNSF shall report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the California Office of Historic Preservation (the State Historic Preservation Office or SHPO) and the public. BNSF may not file its consummation notice and salvage activities related to abandonment (including removal of tracks and ties) may not be initiated until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of BNSF's freight rail service easement will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

¹⁸ Native American Consultation Database, <http://home.nps.gov/nacd/> (last visited July 19, 2011).

Alternatives to the proposed abandonment would include denial (and therefore no change in operations). In this case, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment of the rail freight service easement, the right of way may be suitable for other public use.¹⁹ A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAIL 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 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 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this EA, send **1 original and 2 copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean, who prepared this EA. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 6 (Sub-No. 477X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Christa Dean, the environmental contact for this case, by phone at (202) 245-0299, fax at (202) 245-0454, or e-mail at christa.dean@stb.dot.gov.

¹⁹ As stated above, LACMTA owns the line and plans to extend its current light rail service via the corridor. For those reasons, the corridor would not likely be available for other public use or trail use.

Date made available to the public: July 29, 2011.

Comment due date: August 29, 2011.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment