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SERVICE DATE – FEBRUARY 27, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 453X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KING COUNTY, WA

Decided: February 26, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 0.65 miles of rail line, extending between milepost 10.60 and milepost 11.25, near Wilburton, in King County, WA. Notice of the exemption was served and published in the Federal Register on November 8, 2006 (71 FR 65567-68). The exemption became effective on December 8, 2006.

By decision served on December 7, 2006 (December 2006 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that, prior to the commencement of any salvage activities, BNSF shall: (1) consult with the Washington State Department of Ecology Northwest Regional Office (WDOE) to ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements and comply with the reasonable NPDES requirements; (2) consult with the U.S. Fish and Wildlife Service (USFWS) and the Washington State Department of Fish and Wildlife (WDFW) to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS and WDFW consultations to SEA in writing; (3) consult with the National Marine Fisheries Service (NMFS) to assess potential impacts to the Chinook salmon and its habitat, and report the results of the NMFS consultations to SEA in writing; (4) consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements and, if applicable, comply with the Corps' reasonable requirements; and (5) consult with WDOE to determine whether state coastal management consistency certification is required and, if so, be prohibited from performing any salvage activities until it obtains the certification and be required to notify SEA, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and the Board's environmental regulations at 49 CFR 1105.9. Also, the exemption was made subject to the condition that (6) BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings and structures within the proposed abandonment's right-of-way that are eligible for listing or are listed in the National Register of Historic Places until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (NHPA), and shall report to SEA the results of any consultation with the Washington State Department of Archaeology and Historic Preservation (State Historic Preservation Office or SHPO).

On February 13, 2007, BNSF submitted to SEA correspondence from each of the agencies overseeing the six conditions above. After review of the correspondence, SEA believes that BNSF has complied with all six of the imposed conditions, as discussed below.

In an e-mail dated December 18, 2006, WDOE informed BNSF that the salvage activities described by BNSF do not require coverage under a NPDES permit because the activities do not qualify as clearing, grading and/or excavating under state ordinance. Therefore, SEA recommends that condition 1 be removed.

In an e-mail dated December 18, 2006, WDFW confirmed its recommendation that salvage activities should be avoided between January 1 and August 15 in order to fully protect the Bald eagle and other bird species during breeding season. In an e-mail dated January 5, 2007, USFWS concurred with WDFW's recommendation. Therefore, SEA recommends that condition 2 be removed.

In an e-mail dated December 20, 2006, NMFS informed BNSF that it does not believe that the abandonment will adversely affect Puget Sound Chinook Salmon, Critical Habitat of Puget Sound Chinook Salmon, or Essential Fish Habitat protected under the Magnuson-Stevens Fisheries Conservation and Management Act. NMFS further stated that no further consultation would be necessary. Therefore, SEA recommends that condition 3 be removed.

In an e-mail dated December 14, 2006, the Corps commented to BNSF that its jurisdictional authority in non-navigable waters in the United States, such as Mercer Slough and wetlands near the abandonment, is limited to section 404 of the Clean Water Act, which requires a permit from the Corps for the placement of dredged or fill material into these waters. The Corps concluded that, because the abandonment and removal of rails and ties does not constitute a fill, a permit is not required. Therefore, SEA recommends that condition 4 be removed.

In a letter dated February 9, 2007, WDOE informed BNSF that the proposed abandonment was consistent with the State Coastal Zone Management Program. Therefore, SEA recommends that condition 5 be removed.

Finally, in a letter dated December 4, 2006, based on the available information, the SHPO determined that the proposed abandonment would not affect historic properties. The SHPO further stated that BNSF has agreed to complete an investigation of the historic railroad, and has agreed that the Wilburton Trestle, a resource listed on the Washington State Heritage Register, will not be impacted. The SHPO concluded that its review has conformed to the section 106 process of the NHPA. Therefore, SEA recommends that condition 6 be removed.

Accordingly, the proceeding will be reopened and the previously imposed conditions 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. The proceeding is reopened.
2. Upon reconsideration, the conditions imposed in the December 2006 decision are removed.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary