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SERVICE DATE – DECEMBER 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

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

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
COLFAX COUNTY, NM

Decided: December 11, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 36.90-mile line of railroad between milepost 0.00 near French, and milepost 36.90 near York Canyon, in Colfax County, NM. Notice of the exemption was served and published in the Federal Register on June 21, 2005 (70 FR 35777-78).¹ The notice stated that, if consummation had not been effected by BNSF’s filing of a notice of consummation by June 21, 2006, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. The Board’s regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By decision served on August 11, 2005, at BNSF’s request, the proceeding was held in abeyance for 30 days (until September 12, 2005) to permit the parties to continue negotiations for the sale of the rail corridor outside of the OFA process. The request for issuance of a NITU also was held in abeyance pending completion of the OFA process. Subsequently, a further extension was granted to hold the proceeding in abeyance (until October 12, 2005) by decision served on September 30, 2005.

¹ The exemption was scheduled to become effective on July 21, 2005, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) was filed by July 1, 2005. On June 28, 2005, Hust Brothers, Inc. (HBI), timely filed a formal expression of intent to file an OFA to purchase the line. On the same date, a request for the issuance of a notice of interim trail use (NITU) for the right-of-way was filed by MTHB, LLC (MTHB). On July 15, 2005, Colfax Land and Cattle Company, LLC (Colfax) and Vermejo Park, LLC (Vermejo) late-filed separate notices of intent to file an OFA. By decision served on July 21, 2005, Colfax’s and Vermejo’s late-filed notices of intent to file an OFA were accepted.

On July 18, 2006, MTHB withdrew its request for the issuance of a NITU. On the same day, HBI withdrew its notice of intent to file an OFA. And, on July 27, 2006, Colfax and Vermejo each withdrew their notices of intent to file an OFA.

By decision served on September 29, 2006 (September 2006 decision), the proceeding was reopened to impose seven environmental conditions recommended by the Board's Section of Environmental Analysis (SEA). The conditions required BNSF to: (1) take precautions during salvage operations to ensure public safety, and that salvage contractors satisfy all applicable health and safety laws and regulations; (2) 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 SEA; (3) consult with the Colfax County Floodplain Administrator (CCFA) prior to beginning salvage activities regarding impacts to the 100-year floodplain and comply with the reasonable requirements of CCFA to mitigate any potential impacts; (4) prior to beginning salvage activities, consult with the U.S. Environmental Protection Agency (USEPA) and the New Mexico Environmental Department (NMED) regarding National Pollutant Discharge Elimination System requirements for BNSF's final salvage plans and report the results of this consultation to SEA; (5) notify the U.S. Department of Commerce, National Geodetic Survey, 90 days prior to beginning salvage activities so plans can be made for the possible relocation of the station markers identified on the line; (6) conduct no salvage activities during the months when wintering Bald eagles may occur in the project area; and (7) prior to beginning salvage activities, consult with the U.S. Fish and Wildlife Service (USFWS) regarding potential impacts to the Black-footed ferrets residing in the area and comply with the reasonable recommendations of USFWS. In the September 2006 decision, the Board noted that BNSF stated that the abandonment would result in BNSF's subsequent conveyance of the entire right-of-way to two adjacent landowners, Vermejo and Colfax, and that neither Vermejo nor Colfax had immediate plans to salvage or otherwise dispose of the right-of-way.

BNSF has requested clarification of its deadline for consummation. According to SEA, the salvage-related conditions remain in effect and the railroad must comply with these conditions when it decides to proceed with salvaging the rail line. However, these conditions do not constitute a barrier to BNSF's consummation of the abandonment. Therefore, BNSF may consummate the abandonment at any time between the service date of this decision and 60 days after service (by February 10, 2007). BNSF and any succeeding owner are reminded that the conditions imposed by the Board in its September 2006 decision must be satisfied prior to or during salvage activities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF may file its notice of consummation any time between the service date of this decision and 60 days after service (by February 10, 2007).
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary