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SERVICE DATE – SEPTEMBER 27, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 456X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN RIVERSIDE
COUNTY, CA

Decided: September 27, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 0.50 miles of rail line, extending between milepost ES 0 + 00 and milepost ES 26 + 35, in Riverside, Riverside County, CA.¹ On August 29, 2007, notice of the exemption was served and published in the Federal Register (72 FR 49758). The exemption is scheduled to become effective on September 28, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 31, 2007. In the EA, SEA recommends three conditions. First, SEA notes that the U.S. Fish and Wildlife Service (USFWS) has provided BNSF with a list of threatened and endangered species that may occur in Riverside County. SEA states in the EA that, because of the historically urban and industrial nature of the line and the immediate vicinity around the line, and the limited scope of activities that would occur with salvaging 0.50 miles of rail line, SEA does not expect the proposed abandonment to impact critical habitat or the use of the project area by the listed species. However, because USFWS has not yet offered its conclusions regarding impacts to Federally listed species, SEA recommends in the EA that, pending USFWS's response, BNSF be prohibited from performing any salvage activities or consummating the abandonment until completion of the section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535) with USFWS, be required to report the results of any consultation with USFWS to SEA in writing, and, should any potential impacts be identified, be required to consult with SEA and USFWS to develop appropriate mitigation measures.

Second, in the EA, SEA notes that BNSF indicated in its environmental report that it has had discussions with the California Regional Water Quality Control Board (CRWQCB) and that CRWQCB indicated that a National Pollutant Discharge Elimination System (NPDES) permit would be required under section 402 of the Clean Water Act (33 U.S.C. 1342) if the total area of land to be disturbed in the proposed abandonment exceeds 1 acre. Based on that threshold,

¹ BNSF indicates that a portion of the trackage for the proposed abandonment mistakenly was removed by a contractor for the city of Riverside (the city) and that, if the abandonment is not approved, the track will be restored by BNSF at the city's expense.

BNSF states that an NPDES permit would be required. Accordingly, SEA recommends a condition requiring BNSF to consult with CRWQCB, prior to the commencement of salvage activities, to ensure consideration of, and compliance with, the reasonable NPDES requirements.

Finally, SEA states in the EA that the California Public Utilities Commission (PUC) submitted comments requesting that the Board require, as a condition for the exemption, that the rail and ties be removed along the right-of-way and at all highway-rail crossings along the line within 2 years of a grant of the abandonment exemption. SEA also notes in the EA several comments from PUC regarding safety issues arising from the proposed abandonment, and available funding for clean-up of the right-of-way. Therefore, SEA recommends that, prior to consummation of the proposed abandonment, BNSF consult with PUC regarding PUC's concerns that abandoned track could cause safety hazards on roadways, and report the results of those consultations to SEA in writing.

Comments to the EA were due on September 14, 2007. SEA received one comment from the National Geodetic Survey, stating that no geodetic station markers have been identified that may be affected by the proposed abandonment. Accordingly, the conditions recommended by SEA in the EA will be imposed. Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, 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 exemption of the abandonment of the rail line described above, and covered by the notice served and published in the Federal Register on August 29, 2007, is subject to the conditions that BNSF shall: (1) be prohibited from performing any salvage activities or consummating the abandonment until completion of the section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535) with USFWS, report the results of any consultations with USFWS to SEA in writing, and, should any potential impacts be identified, consult with SEA and USFWS to develop appropriate mitigation measures; (2) prior to commencement of any salvage activities, consult with CRWQCB regarding applicable NPDES requirements and comply with the reasonable NPDES requirements; and (3) prior to consummation of the proposed abandonment, consult with PUC regarding PUC's concerns that abandoned track could cause safety hazards on roadways, and report the results of this consultation to SEA in writing.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary