

38171
SEA

SERVICE DATE – JULY 17, 2007

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-6 (Sub-No. 454X)

**BNSF Railway Company – Abandonment Exemption –
in Multnomah County, OR**

BACKGROUND

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad in Multnomah County, Oregon. The rail line proposed for abandonment extends 0.48 miles from milepost 1.88 to milepost 2.36 (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

BNSF states that the Line skirts a railroad industrial area within the city limits of Portland, Oregon in the heart of the Portland-Vancouver metropolitan area. It runs generally in an east-west direction along Northwest Nicolai Street, approximately 1/2 mile south of the Willamette River. The right-of-way is 100 feet wide and is flanked on the southwest by the historic residential neighborhoods of Willamette Heights and King Heights.

The trackage proposed for abandonment was originally laid in 1925 and was deeded to United Railways. United Railways was founded in 1906 to build an electric interurban line from Portland to San Francisco. This plan was never realized, and United Railways operated industrial trackage under the control of the Spokane, Portland & Seattle Railway (SP&S), a jointly owned subsidiary of Northern Pacific Railway Company (NP) and Great Northern Railway Company (GN). United Railways was dissolved in 1944, and SP&S was absorbed in the 1970 merger of NP, GN and Chicago, Burlington & Quincy Railroad Company to form Burlington Northern, Inc. (BN). In 1996, BN merged with The Atchison, Topeka and Santa Fe Railway Company to become Burlington Northern and Santa Fe Railway Company. The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company in 2005.

ENVIRONMENTAL REVIEW

BNSF submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].¹ The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to BNSF, no local traffic has moved over the Line for at least two years, and there is no overhead traffic to be rerouted. Accordingly, the proposed abandonment 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

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail 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.

As part of the proposed abandonment, BNSF states that it would salvage all rail and rail ties from the Line. There are no bridges or other structures on the Line proposed for abandonment. According to BNSF, salvage activities would begin with the removal of the rails and metal parts of the track structure. Thereafter, wooden ties would be removed and separated into second hand ties, landscape quality ties, and scrap ties; any scrap ties would be disposed of at an appropriate site. Culverts and rail embankments located along the Line would remain intact so as not to alter the prevailing waterflows along the Line. BNSF further indicates that any concrete abutments and piers would be left intact, and that contractors would not be allowed to place fill or other material into waterbodies, including inland waterways.

BNSF indicates that there are two public crossings and no private crossings on the Line. During salvage operations, BNSF states that precautions would be taken to ensure public safety, and contractors would be required to satisfy all applicable health and safety laws and regulations.

¹ The railroad's 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. 454X).

BNSF is not aware of any hazardous waste sites or sites where there have been hazardous material spills on the right-of-way.

The City of Portland (City) has indicated that the proposed abandonment is consistent with its land use plans. The City stated that it has envisioned a recreational trail along the Line as it occurs along a segment of the City's recreational trail alignment. The Oregon Department of Transportation also stated that the character of the neighborhood has been changing from industrial to softer uses such as mixed residential and commercial and that there is little to no need for rail transportation in the immediate area of the proposed abandonment.

The Natural Resources Conservation Service has indicated that the proposed abandonment would have no effect on prime agricultural land.

The Oregon Coastal Management Program has indicated that the proposed abandonment is outside the approved coastal zone. Therefore, there are no reasonably foreseeable effects on coastal uses or resources within the coast zone that would trigger consistency review.

The Oregon Department of Environmental Quality (ODEQ), which administers the Clean Water Act National Pollutant Discharge Elimination System permit program, has indicated that no water permits are required for the proposed abandonment. Furthermore, ODEQ stated that activities within the project area would not take place in or near a water body and that as long as the proposed abandonment does not result in or contribute storm pollutants to stormwater discharge, it is unlikely that the project would cause a water quality standards violation.

The United States Environmental Protection Agency (USEPA) has indicated that the right-of-way appears to be situated in an industrial area and may contain hazardous substances. USEPA has requested information related to "any sites where there have been known hazardous material spills along the right-of-way." Accordingly, we recommend that a condition be imposed upon any decision granting abandonment authority requiring BNSF to consult with USEPA regarding its concerns about hazardous substances along the right-of-way.

In response to BNSF's initial letter, the U.S. Fish and Wildlife Service (USFWS) provided a list of threatened and endangered species for Multnomah County. SEA has reviewed the list and observed that the following fifteen Federally listed species are identified for the county:

- Columbian white-tailed deer
- Bald Eagle
- Northern spotted owl
- Chum salmon
- Coho salmon
- Steelhead
- Sockeye salmon

- Chinook salmon
- Bull Trout salmon
- Golden Indian Paintbrush
- Willamette daisy
- Howellia
- Bradshaw's lupine
- Kincaid's lupine
- Nelson's checker-mallow

Because of the historically industrial nature of the Line and immediate vicinity, and the limited scope of activities that would occur with salvaging 0.48 miles of rail line, SEA would not expect the proposed abandonment to impact critical habitat or the level of use of the project area by the listed species. In addition, ODEQ has indicated that no water permits are required for the proposed abandonment. Therefore, SEA believes the proposed abandonment would not likely disturb the listed species' habitats, or affect food stocks, prey species and foraging areas for the listed species.

USFWS has not offered its conclusions regarding impacts to Federally listed species. Pending a USFWS response, SEA recommends a condition that prohibits BNSF from conducting any salvage activities and consummating abandonment until completion of the Section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535). A copy of this EA has also been provided to USFWS.

The Oregon Department of Fish and Wildlife (ODFW) has indicated that it has no resource concerns in the immediate vicinity of the project that might be affected by the physical removal of the Line. However, ODFW recommends that all materials, particularly creosote rail ties and oil-stained ballast, be disposed of in a manner that complies with the legal disposal criteria for the state. Accordingly, we recommend that a condition be imposed upon any decision granting abandonment authority requiring BNSF to comply with state regulations for disposal of all rail materials.

The National Park Service reviewed the project and determined that there are no National Park Service units within the proposed project impact area.

The Bureau of Land Management (BLM) stated that there are no public lands administered by BLM adjacent to, or which may be affected by, the proposed abandonment.

The Oregon Parks and Recreation Department (OPRD) has indicated that OPRD does not own any land identified as being impacted by the proposed abandonment. Additionally, OPRD stated that there is no state park in the proposed project area.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. In addition to the parties on the Board's service

list for this proceeding, SEA is providing a copy of this EA to USEPA, ODFW and USFWS for their review and comment.

HISTORIC REVIEW

BNSF served the historic report on the Oregon State Historic Preservation Officer (SHPO), pursuant to 49 CFR 1105.8(c). The SHPO has submitted comments stating that there have been no previous cultural resource surveys completed near the proposed project area. However, the project area lies within an area generally perceived to have a high probability for possessing archeological sites and/or buried human remains. The SHPO recommended exercising extreme caution during potential ground disturbing activities and stated that if any cultural material is discovered, all work should cease immediately until a professional archeologist can assess the discovery. We have reviewed the report and the information provided by the SHPO and concur with the SHPO's comments. Accordingly, we recommend a condition be imposed upon any decision granting abandonment authority requiring BNSF to cease salvage activities immediately and contact SEA and the SHPO if any cultural material is discovered in the project area.

Pursuant to the Advisory Council on Historic Preservation's regulations for implementing the Section 106 process of the National Historic Preservation Act at 36 CFR 800.5(c) and 36 CFR 800.8, SEA does not believe that the proposed abandonment would adversely affect historic properties listed in or eligible for inclusion in the National Register because there are no railroad structures on the property that are 50 years or older. However, the SHPO has not provided comments on this matter. Accordingly, we are recommending a condition requiring the railroad 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.

SEA conducted a search of the Native American Consultation Database at <http://www.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that the Confederated Tribes of the Warm Springs Reservation of Oregon may have an interest in the proposed abandonment. Accordingly, SEA is sending a copy of this EA to the Confederated Tribes of the Warm Springs Reservation of Oregon for their review and comment.

CONDITIONS

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

1. BNSF Railway Company (BNSF) shall be prohibited from performing any salvage activities and consummating abandonment until completion of the Section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535) with the U.S.

Fish and Wildlife Service (USFWS). BNSF shall consult with Board's Section of Environmental Analysis (SEA) and USFWS to develop appropriate mitigation measures if necessary. BNSF shall report the results of any consultation with USFWS in writing to SEA.

2. Prior to commencement of any salvage activities, BNSF Railway Company shall consult with the United States Environmental Protection Agency regarding its concerns about hazardous waste materials along the right-of-way and comply with its reasonable requirements.
3. Prior to commencement of any salvage activities, BNSF Railway Company shall consult with Oregon Department of Fish and Wildlife and comply with applicable state regulations for disposal of all rail materials including creosote rail ties and oil-stained ballast.
4. In the event that any archaeological sites, human remains or associated artifacts are discovered during BNSF Railway Company's (BNSF) salvage activities, BNSF shall immediately cease all work and shall notify the Board's Section of Environmental Analysis (SEA) and the Oregon Parks and Recreation Department, Heritage Conservation Division (State Historic Preservation Office or SHPO). SEA shall then consult with the SHPO and BNSF to determine whether any mitigation measures are necessary.
5. BNSF Railway Company (BNSF) shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (generally, 50 years old or older) 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 Section of Environmental Analysis regarding any consultations with the SHPO and any other Section 106 consulting parties. BNSF may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) 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, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by

another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS 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 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Danielle Gosselin, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 454X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Danielle Gosselin, the environmental contact for this case, by phone at (202) 245-0300, fax at (202) 245-0454, or e-mail at danielle.gosselin@stb.dot.gov.

Date made available to the public: July 17, 2007.

Comment due date: July 30, 2007.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment