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SERVICE DATE - AUGUST 13, 2004

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**STB DOCKET NO. AB-6 (Sub-No. 421X)**

**The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in  
Crow Wing County, MN**

**BACKGROUND**

In this proceeding, the Burlington Northern and Santa Fe Railway Company (BNSF) filed a petition for exemption under 49 CFR 1152 seeking exemption from the requirements of 49 U.S.C. 10903 to abandon a 1.6-mile line of railroad, extending from Milepost 0.00 to Milepost 1.60 in Brainerd, Crow Wing County, MN. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, BNSF will be able to salvage track, ties, and other railroad appurtenances and dispose of the right-of-way.

**DESCRIPTION OF THE LINE**

According to BNSF, the right-of-way was acquired by the Brainerd and Northern Minnesota Railway (BNMR) in approximately 1894, and the BNMR was acquired by the Minnesota and International Railway Company (MIRC) in 1901. MIRC was subsequently acquired by the Northern Pacific (NP). In 1970, NP merged with other railroads to become part of Burlington Northern Railroad (BN), and in 1995, BN merged with the Atchison Topeka and Santa Fe Railway to become BNSF.

The line is located on the west side of the City of Brainerd and, as the trackage exits the city, it continues northward through an adjoining rural area. The area north of Brainerd has recreational homes, lakes, forested areas, and some agricultural areas. According to BNSF, the width of the right-of-way is 100 feet, and abandonment of the line would allow for the elimination of one public crossing. The abandonment would also allow the Minnesota Department of Transportation to remove an overpass on the west side of Brainerd. BNSF states that there are no bridges or structures that are 50 years old or older.

According to BNSF, Ferrellgas is the only customer that used the line in the past two years. Ferrellgas received 58 cars of propane in 2002 and 32 cars of propane in 2003.<sup>1</sup> However, Ferrellgas relocated to another rail-served location in Brainerd in 2003, and the line is no longer

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<sup>1</sup> According to the District Manager of Ferrellgas at Brainerd, Ferrellgas received shipments of propane on the line through April 2003.

in operation. Consequently, there will be no diversion of rail traffic to truck traffic as a result of the proposed abandonment. Ferrellgas supports the proposed abandonment.

Upon receiving authority to abandon the line, BNSF may remove the remaining rail, track material, and crossties. BNSF notes that track materials would be removed by a qualified salvage contractor and states that the roadbed would be left intact. BNSF states that it does not know whether the right-of-way is suitable for alternative public uses.

## **ENVIRONMENTAL REVIEW**

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

The National Geodetic Survey (NGS) has advised SEA that two geodetic station markers have been identified that may be affected by the proposed abandonment.

The United States Army Corps of Engineers, St. Paul District (USACE), has determined that the proposed abandonment, as outlined by BNSF, would not involve the discharge of dredged or fill material in waters of the United States, including wetlands. Therefore, a USACE permit under Section 404 of the Clean Water Act (33 U.S.C. 1344) would not be required.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS), determined that the proposed abandonment should have minimal effect on any existing or potential farmland along the rail route. This determination was based on information provided by BNSF that the railroad grade would remain intact and the proposed abandonment activities would involve very little grading or leveling. The NRCS also based its determination on the assumption that culverts and waterways would remain. Accordingly, no mitigation measures were suggested.

The Minnesota Department of Natural Resources, Natural Heritage and Nongame Research Program (MDNR), reviewed the Minnesota Natural Heritage database to determine if any rare plant or animal species or other significant natural features are known to occur within an approximate one-mile radius of the proposed abandonment. According to the MDNR, only the state-threatened Blanding's turtle (*Emydoidea blandingii*) may be impacted by the proposed project. To prevent any harm to the turtle population, the MDNR submitted a list of recommendations that includes distributing an information sheet on the Blanding's turtle to all contractors working in the area. The information sheet provides a description of the Blanding's turtle, recommends measures to take to avoid or minimize any impacts that the proposed project might have on the Blanding's turtle, and recommends erosion control and revegetation measures. Accordingly, SEA recommends that BNSF have project personnel review the Blanding's turtle

information sheet provided by the MDNR and recommends that BNSF contact Sarah Hoffmann at the MDNR prior to commencement of any salvage activities.

The United States Environmental Protection Agency, Region 5 (EPA), also expressed concerns regarding the Blanding's turtle. In addition to MDNR's request that project personnel review the Blanding's turtle information sheet, the EPA recommended that silt fencing be placed along the wetlands prior to removal activities, in order to reduce the chances of a Blanding's turtle moving into the project area. In addition, the EPA has expressed concerns about the removal and salvage methods to be used by BNSF during the proposed abandonment, the final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, and erosion mitigation practices to be utilized during abandonment activities. Specific mitigation measures suggested by the EPA include: utilizing existing public and private crossings when removing materials, particularly in areas adjacent to wetlands, and revegetating disturbed areas with native flora. In order to adequately address the concerns of the EPA, we will recommend that BNSF consult with the EPA, Region 5, prior to commencement of any salvage activities on this project.

The EPA recommends that BNSF contact the Regional Environmental Assessment Ecologist, Wayne Barstad, to facilitate a review of the effects of this project on state endangered or threatened species or areas designated as critical habitat. Accordingly, we will recommend that BNSF consult with Regional Environmental Assessment Ecologist, Wayne Barstad, prior to commencement of any salvage activities.<sup>2</sup>

BNSF does not believe that the proposed abandonment would affect any wildlife sanctuaries, refuges, or National or State parks or forests. The United States Department of the Interior, Bureau of Land Management's Milwaukee Field Office (BLM), submitted a letter stating that there are no BLM-administered Federal lands along the railroad line, and the U.S. Department of Agriculture, Forest Service - Eastern Region (Forest Service), submitted a letter stating that there are no Forest Service-administered lands in the proposed project impact area.

BNSF states that there are no known hazardous waste sites or hazardous material spill sites on the subject right-of-way. However, a portion of the right-of-way is adjacent to a former tie treating plant that is currently on both the state and Federal Superfund list. According to the EPA's web site, this plant preserved railroad ties with creosote and fuel oil and operated between 1907 and 1985. In an August 10, 2004 phone call, Sue Johnson, the State Project Manager with

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<sup>2</sup> The EPA also recommended consultation with the United States Fish and Wildlife Service (USFWS) to determine the effects of this project on federally-listed or threatened species or areas designated as critical habitat. SEA notes that the USFWS Region 3 Office in Fort Snelling was sent copies of the Environmental and Historic Reports but has not submitted any comments on the proposed abandonment. However, the USFWS will receive a copy of this Environmental Assessment and has the opportunity to comment by September 13, 2004.

the Minnesota Pollution Control Agency (MPCA), stated that a waste disposal facility is also adjacent to the line. According to the MPCA, local groups may be interested in creating a trail and the MPCA expressed concern regarding the safety of trespassers. If the line becomes a trail, the MPCA suggested that a fence would need to be constructed to restrict access to the superfund and waste disposal sites. To address MPCA's concerns, SEA recommends that BNSF consult with the MPCA prior to commencement of any salvage activities. We further recommend that BNSF submit the results of these consultation efforts in writing to SEA prior to the onset of salvage operations.

As of the date of this report, no formal request for a public use condition or trails use condition has been submitted. The requirements for public use and trail use are discussed below.

### **The 1995 Trails Act and the Board's Environmental Review**

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned. The Trails Act is intended to preserve railroad rights-of-way for future railroad use.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Certificate of Interim Trails Use (CITU))<sup>3</sup> to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board imposes a NITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Act is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal agencies require environmental review.

### **HISTORIC REVIEW**

BNSF submitted an historic report as required by the Surface Transportation Board's environmental rules [49 CFR 1105.8(a)] and served the report on the Minnesota Historical

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<sup>3</sup> This process allows railroad rights-of-way to be preserved by allowing interim trail use on lines that otherwise would be abandoned. In exempt abandonment procedures, it is a notice of interim trails use (NITU) that is issued rather than a CITU.

Society (the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). According to the SHPO, other portions of the line proposed for abandonment have been found to meet National Register criteria. However, because the segment proposed for abandonment is short in length and is located within the City of Brainerd, the SHPO has determined that the abandonment would have no adverse effect on the overall line's historical characteristics. We have reviewed the report and the information provided by the SHPO and concur with the SHPO's comments.

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, we have determined that the proposed abandonment will not adversely affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(e), consists of the applicant's/railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public.

### **CONDITIONS**

SEA recommends that the following environmental conditions be placed on any decision granting abandonment authority:

1. The National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, BNSF shall notify NGS at least 90 days prior to salvage activities in order to plan for their relocation.
2. The Minnesota Department of Natural Resources, Natural Heritage and Nongame Research Program (MDNR) has indicated that the proposed abandonment and discontinuance may impact the state threatened Blanding's turtle. Accordingly, SEA recommends that, prior to commencement of any salvage activities, BNSF consult with Sarah Hoffmann at the MDNR (at 651-296-7863) in order to discuss the recommended measures to protect this species. We also recommend that BNSF have project personnel review the Blanding's turtle information sheet provided by the MDNR.
3. We recommend that BNSF contact United States Environmental Protection Agency, Region 5 (EPA), prior to commencement of any salvage activities on this project in order to discuss the EPA's concerns regarding: the Blanding's turtle; removal and salvage methods to be used by BNSF during the proposed abandonment; final disposition of crossties preserved with creosote; procedures for storing and fueling of construction equipment; procedures for the prevention and/or control of spills from construction equipment; and erosion mitigation practices to be utilized during abandonment activities. We also recommend that BNSF utilize existing public and private crossings when removing materials, particularly in wooded areas and areas adjacent to wetlands, and reseed disturbed areas with native flora.
4. Based on comments of the United States Environmental Protection Agency, Region 5

(EPA), we recommend that, prior to commencement of any salvage activities, BNSF contact the Regional Environmental Assessment Ecologist, Wayne Barstad, to facilitate a review of the effects of this project on state endangered or threatened species or areas designated as critical habitat.

5. The right-of-way is adjacent to a former tie treating plant, which is currently on both the state and Federal Superfund list, and a waste disposal facility. To address the concerns of the Minnesota Pollution Control Agency, SEA recommends that BNSF consult with the State Project Manager (Sue Johnson at 218-725-7762) prior to commencement of any salvage activities. We further recommend that BNSF submit the results of these consultation efforts in writing to SEA prior to the onset of salvage operations.

## **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 will 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 the petition for 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) 565-1592, 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 Christa Dean, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub No. 421X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Christa Dean, the environmental contact for this case, by phone at (202) 565-1606, fax at (202) 565-9000, or e-mail at [deanc@stb.dot.gov](mailto:deanc@stb.dot.gov).

Date made available to the public: August 13, 2004.

**Comment due date: September 13, 2004.**

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

Vernon A. Williams  
Secretary

Attachment

# BRainerD, MINNESOTA TRACKAGE

