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SERVICE DATE – AUGUST 14, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 439X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BOTTINEAU
COUNTY, ND

Decided: August 11, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 11.90 miles of rail line, extending from milepost 40.10, near Bottineau, to milepost 52.00, near Souris, in Bottineau County, ND. Notice of the exemption was served and published in the Federal Register on July 14, 2006 (71 FR 40190-01). The exemption is scheduled to become effective on August 15, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 21, 2006. In the EA, SEA notes that the Natural Resources Conservation Service (NRCS) stated that the project should have no significant impact on existing soil and water conservation practices in the area. However, NRCS also stated that all natural drainage patterns should be maintained to the extent possible and that land use affected during abandonment should be returned to original land use conditions. To address this issue, SEA recommends a condition requiring BNSF to consult with NRCS, prior to the commencement of salvage activities, regarding measures to minimize impacts to natural drainage patterns and existing land cover.

SEA also states in the EA that the U.S. Fish and Wildlife Service (USFWS) noted that, if all proposed salvage activities are confined to the existing right-of-way (ROW), the proposed abandonment activities would not impact Waterfowl Production Areas and other lands administered by USFWS. In the event that salvage plans require activity outside the ROW, SEA recommends a condition requiring BNSF to consult with USFWS, prior to the commencement of salvage activities, regarding impacts to USFWS-administered lands.

According to SEA, USFWS also recommended a condition that BNSF incorporate mitigation measures to minimize disturbance to fish and wildlife resources. Thus, SEA recommends that BNSF incorporate five mitigation measures into its salvage plans, to: avoid construction in Boundary Creek during the fish migration and spawning period from April 15 – June 1; make no stream channel alterations or changes in drainage patterns; defer the timing of construction to late summer (after July 15) or fall so as not to disrupt waterfowl or other wildlife during the nesting season and to avoid high water conditions; install appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels; and reseed disturbed areas with a mixture of native grass and forb species.

SEA further states in the EA that USFWS has identified three Federally listed endangered and threatened species within the proposed abandonment's area of influence that may require specific protective measures in accordance with the Endangered Species Act: the Whooping crane (*Grus americana*), Gray wolf (*Canis lupus*) and Bald eagle (*Haliaeetus leucocephalus*). Therefore, SEA recommends that, prior to commencement of salvage activities, BNSF be required to consult with USFWS regarding possible impacts to species of Federal concern, and to report the results of this consultation in writing to SEA.

SEA indicates in the EA that the North Dakota Parks and Recreation Department (NDPRD) has reviewed the North Dakota Natural Heritage Inventory for rare species information for the project area and has found that the Dakota skipper (*Hesperia dacotae*) has been recorded in a section adjacent to the project area, and that the project area may be suited for this species, or other rare, threatened, sensitive or endangered species. Accordingly, SEA recommends a condition requiring BNSF to consult with NDPRD prior to the commencement of salvage activities, regarding potential impacts to rare, threatened, sensitive or endangered species.

Additionally, in the EA, SEA states that the North Dakota Office of the State Engineer (Office of the State Engineer) indicated that the proposed abandonment would not appear to impact state lands or require construction or drainage permits. However, the Office of the State Engineer also stated that any remnant bridge pilings should be removed or cut to grade so that they do not collect debris or otherwise obstruct the drainage of surface waters. Therefore, SEA recommends a condition requiring BNSF to consult with the Office of the State Engineer prior to the commencement of salvage activities, regarding planned bridge removal activities.

SEA also states in the EA that the North Dakota Department of Health (NDDOH) noted that the environmental impacts from the proposed abandonment should be minor, but that those impacts could be controlled with proper construction methods. NDDOH recommended a set of best management practices that should be implemented. Accordingly, SEA recommends a condition requiring BNSF to consult with NDDOH prior to the commencement of salvage activities, regarding appropriate and reasonable best management practices.

Further, SEA states in the EA that the North Dakota State Water Commission noted that the line is located within floodplains mapped within the cities of Bottineau and Souris (the Cities), and thus, BNSF should apply for a Non-Building Floodplain Development Permit from the Cities' floodplain administrators prior to salvage activities. To address this issue, SEA recommends a condition requiring BNSF to consult with the Cities' floodplain administrators prior to the commencement of salvage activities, and to comply with any reasonable requirements.

Finally, SEA states that the U.S. Environmental Protection Agency and NDDOH both noted that the proposed salvage activities could be subject to section 402 of the Clean Water Act.

Because NDDOH is the agency responsible for administering this program, SEA recommends a condition requiring BNSF to consult with NDDOH prior to the commencement of salvage activities, regarding section 402 requirements.

Comments to the EA were due August 4, 2006. SEA received comments from the U.S. Department of Commerce, National Geodetic Survey (NGS) on July 28, 2006, stating that seven geodetic station markers may be located in the area of the proposed abandonment. Therefore, SEA recommends a condition requiring BNSF to notify NGS at least 90 days prior to beginning salvage activities to plan for their possible relocation.

The conditions recommended by SEA 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 covered by the notice served and published in the Federal Register on July 14, 2006, is subject to the conditions that, prior to the commencement of any salvage activities, BNSF shall: (1) consult with NRCS concerning measures to minimize impacts to natural drainage patterns and existing land cover; (2) consult with USFWS regarding impacts to USFWS-administered lands; (3) incorporate into its salvage plans the five recommended mitigation measures to minimize disturbance to fish and wildlife resources; (4) consult with USFWS to determine possible impacts to species of Federal concern, and to report the results of this consultation in writing to SEA; (5) consult with NDPRD regarding potential impacts to rare, threatened, sensitive or endangered species; (6) consult with the Office of the State Engineer regarding planned bridge removal activities; (7) consult with NDDOH regarding appropriate and reasonable best management practices and section 402 requirements; (8) consult with the Cities' floodplain administrators and comply with any reasonable requirements; and (9) notify NGS 90 days prior to salvage activities to plan for the possible relocation of the seven geodetic station markers identified on the line.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary