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SERVICE DATE – LATE RELEASE AUGUST 10, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN MULTNOMAH COUNTY, OR

Decided: August 10, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.48-mile line of railroad between milepost 1.88 and milepost 2.36, near Portland, in Multnomah County, OR (Line). Notice of the exemption was served on July 12, 2007, and published in the Federal Register on July 17, 2007 (72 FR 39136). The exemption is scheduled to become effective on August 11, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 17, 2007. In the EA, SEA noted that the U.S. Fish and Wildlife Service (USFWS) has indicated that there are several Federally listed threatened and endangered species which may be in or near the project area which may require specific protective measures in accordance with the Endangered Species Act. Federally listed species include the 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, and the Nelson's checker-mallow. The Oregon Department of Environmental Quality, 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. Therefore, SEA believes that the proposed abandonment would not likely disturb the listed species' habitats, or affect food stocks, prey species, and foraging areas for the listed species. The USFWS has not offered its conclusions regarding impacts to Federally listed species. Therefore, SEA recommended a condition prohibiting 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).

SEA also states in the EA that the U.S. 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. Therefore, SEA recommends that BNSF be required, prior to commencement of any salvage activities, to consult with USEPA concerning hazardous substances along the right-of-way and comply with USEPA's requirements.

SEA further states in the EA that 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 removal of the Line. However, ODFW recommended that all materials, particularly creosote rail ties and oil-stained ballast, be disposed of in compliance with the legal disposal criteria for the state. Therefore, SEA recommends that BNSF be required, prior to beginning any salvage activities, to comply with state regulations for disposal of all rail materials.

Additionally, SEA states in the EA that the Oregon State Historic Preservation Officer (SHPO) states 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. Therefore, SEA recommends that, in the event any cultural materials are discovered during salvage operations, BNSF be required to cease work immediately and contact SEA and the SHPO. SEA shall then consult with the SHPO and BNSF to determine whether any mitigation measures are necessary.

Finally, SEA notes in the EA that, 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 old or older. However, the SHPO has not provided comments on this matter. Therefore, SEA recommends that BNSF retain its interest in and take no steps to alter the historic integrity of all sites, buildings, structures and objects on the right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) and report to SEA the results of any consultations with the SHPO and any other consulting parties. Once SEA has completed the section 106 process and the Board has removed this condition, BNSF may file its consummation notice with the Board and initiate salvage activities.

Comments to the EA were due by August 1, 2007. After the EA was issued, USFWS advised that there would be no effect on the species listed in the EA but recommended that BNSF consult with the National Marine Fisheries Service (NMFS) regarding the marine animals on the list. Accordingly, SEA believes that the section 7 consultation process of the Endangered Species Act imposed in the July 17, 2007 decision is no longer necessary. SEA does, however, recommend that, prior to any salvage activities, BNSF consult with NMFS regarding the marine animals on the threatened and endangered list, consult with SEA and NMFS to develop appropriate mitigation measures, if necessary, and report the results of any consultation with NMFS to SEA.

In a letter filed on August 6, 2007, the SHPO states that the proposed abandonment would have no effect on any known cultural resources. Therefore, SEA recommends that the section 106 historic preservation condition recommended in the July 17, 2007 EA not be imposed.

As conditioned, this decision 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 notice served on July 12, 2007, and published in the Federal Register on July 17, 2007, exempting the abandonment of the line described above is subject to the conditions that BNSF shall: (1) prior to commencement of any salvage activities, consult with USEPA regarding its concerns about hazardous waste materials along the right-of-way and comply with USEPA's requirements; (2) prior to commencement of any salvage activities, consult with NMFS regarding the marine animals on the list of threatened and endangered animals for Multnomah County, consult with NMFS and SEA to develop appropriate mitigation measures, if necessary, and report to SEA the results of any consultation with NMFS; (3) prior to beginning any salvage activities, consult with ODFW and comply with applicable state regulations for disposal of all rail materials including creosote rail ties and oil-stained ballast; and (4) in the event any archeological sites, human remains or associated artifacts are discovered during salvage activities, immediately cease all work and notify SEA and the SHPO.

3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary