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OEA

SERVICE DATE – NOVEMBER 25, 2011

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-6 (Sub-No. 478X)

BNSF Railway Company - Abandonment Exemption - in Cass County, N.D.

BACKGROUND

In this proceeding, BNSF Railway Company (BNSF or railroad) filed a notice under 49 C.F.R. § 1152.20 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Cass County, North Dakota (ND). The rail line proposed for abandonment is a 7.40-mile segment between Milepost 68.10 at Arthur and Milepost 75.50 at Hunter, ND (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 would be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line is located in an agricultural area with rural communities at either end of the Line. The width of the right-of-way ranges from 100 to 200 feet. The terrain is flat. According to the railroad, there are three structures on the Line that are 50 years of age or older. Descriptions of these structures are provided below:

- Open-pile trestle at Milepost 70.00 – 28 feet long, 6 feet high; built in 1955; traverses a drainage ditch;
- Open-pile trestle at Milepost 73.60 – 28 feet long, 6 feet high; built in 1945; traverses a drainage ditch; and
- Open-pile trestle at Milepost 74.80 – 152 feet long, 18 feet high; built in 1955; traverses the Elm River.

No local rail traffic has moved on the Line during the at least two years. The Line is stub-ended, and therefore, not capable of any overhead traffic. There would be no diversion of rail traffic to motor carriage. BNSF is not aware of any hazardous waste sites on the Line.

The Line was apparently constructed by the St. Paul, Minneapolis and Manitoba Railway Company in the late 1800s but was sold to the Great Northern Railway Company (GN) in 1907. In 1970, GN merged with the Northern Pacific Railway Company, Pacific Coast Railroad Company and Chicago, Burlington & Quincy Railroad Company to become Burlington Northern, Inc. (BN). BN was renamed Burlington Northern Railroad Company in 1981, and in 1996,

merged with The Atchison, Topeka and Santa Fe Railway Company to become The Burlington Northern and Santa Fe Railway Company. The latter was renamed 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 because of the abandonment or any post-abandonment activities. 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 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) reviewed and investigated the record in this proceeding.

Diversion of Traffic

Because there is no rail traffic on the Line, 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

BNSF intends to remove the rails, ties, and bridges. Ballast and culverts would remain in place. Removal of material would be accomplished through the use of the right-of-way and existing public and private crossings. Specialized machinery would be placed on the right-of-way to remove the rails and related steel components. Wooden ties would be raised from the ballast with a tool designed to minimize ground disturbance. Good quality ties would be reused for rail service, landscape-quality ties would be sold, and scrap ties would be shipped to disposal sites approved by the U.S. Environmental Protection Agency.

Salvage activities would be limited to the width of the right-of-way. Fill material would not be placed in water bodies. Existing road crossings would be removed and repaved. Any crossing signals would be dismantled and removed.

BNSF does not believe that the proposed abandonment would be inconsistent with local or regional land use plans. The City of Arthur expresses no objection to the proposed

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. 478X).

abandonment and Cass County states that the proposed abandonment is consistent with the county's 2005 Comprehensive Plan.

The Natural Resources Conservation Service states that no further action is required under the Federal Farmland Protection Policy Act (7 U.S.C. § 4201) because the proposed salvage activities would be confined to the existing right-of-way.

The U.S. Fish and Wildlife Service, Ecological Services, ND Field Office states that the proposed abandonment would have no significant impact on fish and wildlife resources, and that no federally listed endangered or threatened species are known to occupy the project area.

The U.S. Army Corps of Engineers (Corps) has not responded to the railroad's environmental report. Based on the railroad's description of the Line and salvaging activities, potential impacts to waters of the U.S. would not be expected and a permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) would not likely be applicable. Nevertheless, OEA has provided a copy of this EA to the Corps for review and comment.

The U.S. Environmental Protection Agency, Region 8 states that a permit under Section 402 of the Clean Water Act (33 U.S.C. § 1342) would be required if construction activities disturb one or more acres, and that the Section 402 permitting authority is the State of North Dakota Department of Health (NDDOH). Based on the railroad's description of the proposed salvaging activities, a permit under Section 402 would not likely be applicable. Nevertheless, OEA has provided a copy of this EA to NDDOH and has recommended a condition that would require BNSF to consult with NDDOH to verify Section 402 permit applicability.

The National Geodetic Survey (NGS) advises OEA that 1 geodetic station marker has been identified that could be affected by the proposed abandonment. Accordingly, OEA recommends a condition that requires BNSF to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy the geodetic station marker.

The North Dakota State Water Commission states that the proposed abandonment is not in an identified floodplain.

HISTORIC REVIEW

The railroad submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the State Historical Society of North Dakota (the State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). The SHPO replies in an August 25, 2011 letter (ND SHPO Ref.: 11-2496) that it does not know of any structures eligible for listing in the National Register of Historic Places along the Line. Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that

the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

OEA conducted a search of the Native American Consultation Database at www.cast.uark.edu/other/nps/nacd/ (visited November 7, 2011) to identify federally recognized tribes that may have ancestral connections to the project area. The database identified the following 10 tribes with connections to Cass County:

- Flandreau Santee Sioux Tribe of South Dakota,
- Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota,
- Lower Sioux Indian Community of the State of Minnesota,
- Minnesota Chippewa Tribe, Minnesota,
- Prairie Island Indian Community of the State of Minnesota,
- Santee Sioux Nation, Nebraska,
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota,
- Spirit Lake Tribe, North Dakota,
- Upper Sioux Community, Minnesota, and
- White Earth Band of Minnesota Chippewa Tribe, Minnesota.

A copy of this EA has been provided to each tribe for review and comment.

CONDITIONS

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

1. BNSF Railway Company shall consult with the North Dakota Department of Health, Division of Water Quality prior to beginning salvage activities to identify any permitting requirements under Section 402 of the Clean Water Act (33 U.S.C. § 1342).
2. BNSF Railway Company shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station marker.

CONCLUSIONS

Based on the information provided from all sources to date, OEA 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 and no salvage activities), 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 C.F.R § 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 the time specified in the Federal Register notice. 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 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at 202-245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, D.C. 20423.

COMMENTS

If you wish to file comments regarding this EA, please send an **original and one copy** to Surface Transportation Board, Washington, D.C. 20423, to the attention of Dave Navecky, who prepared this document. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 478X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Dave Navecky, the environmental contact for this case, by phone at 202-245-0294, fax at 202-245-0454, or e-mail at david.navecky@stb.dot.gov.

Date made available to the public: November 25, 2011.

Comment due date: December 9, 2011.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment