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SERVICE DATE – OCTOBER 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 457X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN STEVENS COUNTY,
MN

Decided: October 3, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a rail line between mileposts 86.00 and 86.65, in Morris, Stevens County, MN, a distance of 0.65 miles. Notice of the exemption was served and published in the Federal Register on September 5, 2007 (72 FR 51006-07). The exemption is scheduled to become effective on October 5, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on September 10, 2007. In the EA, SEA stated that, by letter dated April 6, 2007, the United States Fish and Wildlife Service (USFWS) indicated that it does not own any land or hold any interest in land located in the vicinity of the line proposed for abandonment. USFWS added that it does not have any concerns regarding real estate matters and that the proposed abandonment is not expected to adversely impact any Federally listed threatened or endangered species. Out of an abundance of caution, however, SEA recommended that a condition be imposed requiring BNSF to consult with USFWS regarding possible impacts to Federally listed threatened or endangered species if additional salvage activities or ground disturbance occurs along the right-of-way.

SEA further stated that BNSF submitted a historic report as required by the Board's rules at 49 CFR 1105.8(a) and served a copy of the report on the Minnesota State Historic Preservation Office (MNSHPO) pursuant to 49 CFR 1105.8(c). According to SEA, based on available information, MNSHPO submitted comments stating that the rail line as a whole, historically known as the Little Falls and Dakota Line, is eligible for listing in the National Register of Historic Places (National Register). SEA added that MNSHPO further advised that generally, abandonment without protective measures constitutes an adverse effect, but that MNSHPO recommended no mitigation for the proposed abandonment. SEA also stated that, because the line proposed for abandonment is eligible for the National Register, a condition should be imposed requiring BNSF 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) that are eligible for listing or listed in the

National Register until completion of the section 106 process of the National Historic Preservation Act (16 U.S.C. 470f).¹

Comments to the EA were due by September 25, 2007. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed. Based on SEA's recommendation, 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 notice served and published in the Federal Register on September 5, 2007, exempting the abandonment of the line described above is subject to the conditions that BNSF shall: (1) consult with USFWS regarding any impacts on Federally listed threatened or endangered species if any salvage activities or ground disturbance occurs along the right-of-way as a result of the proposed abandonment; and (2)(a) 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) that are eligible for listing or listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed, and (b) report back to SEA regarding any consultations with MNSHPO, Tribal Historic Preservation Office (if on tribal lands), any other section 106 consulting parties, and the public. BNSF may not file its consummation notice or initiate any salvage activities until the section 106 process has been completed and the Board has removed this condition.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

¹ SEA indicated that it sent a copy of the EA for review and comment to seven Federally recognized tribes that may have ancestral connections to the project area.