

42666  
OEA

SERVICE DATE – SEPTEMBER 24, 2012

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 6 (Sub-No. 485X)**

**BNSF Railway Company—Abandonment Exemption—  
McKinley County, N.M.**

**BACKGROUND**

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in McKinley County, New Mexico. The rail line proposed for abandonment extends approximately 5.11 miles from milepost 14.50 to milepost 19.61 north of town of Defiance (the Line). At various points, the Line crosses lands owned by or under the management of the Bureau of Land Management (BLM), the Navajo Nation, and private entities. 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 will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

**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. 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)].<sup>1</sup> The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

***Diversion of Traffic***

According to BNSF, no local traffic has moved over the Line for at least two years and there is no overhead traffic. Accordingly, the proposed abandonment would not adversely impact the development, use or transportation of energy resources, recyclable commodities or

---

<sup>1</sup> The Environmental and Historic Reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB 55 (Sub-No. 716X).

ozone-depleting materials; and would not result in the diversion of rail traffic to truck traffic that could cause significant impacts to air quality or the local transportation network.

### *Salvage Activities*

If abandonment authority is granted in this proceeding, BNSF states that it would salvage rail, ties, and one bridge that lies along the Line, but would not remove or alter culverts, ballast, or the underlying roadbed. Road crossings and signals would be removed and remediated as required by local governing authorities. Salvage would be conducted within the right-of-way using specialized machinery and in accordance with best practices to prevent any disruption to waterways in the project area.

The Natural Resources Conservation Service (NRCS) has submitted comments to the effect that the proposed project would not result in negative impacts to areas classified as prime agricultural land and thus is not subject to permitting under the Farmland Protection Policy Act. Accordingly, no mitigation regarding the conservation of prime agricultural land is recommended.

BNSF has stated, and OEA review has confirmed, that the proposed abandonment is not located in a designated coastal zone. Accordingly, no mitigation regarding the protection of coastal resources is recommended.

In its comments, the U.S. Environmental Protection Agency (EPA) stated that the project as described would not require a storm water management permit under Section 402 of the Clean Water Act. The New Mexico Environment Department (NMED) also submitted comments stating that the abandonment would probably have no impact on surface water quality.

In a letter dated June 26, 2012 to the U.S. Army Corps of Engineers (Corps), BNSF states that proposed abandonment would not result in the discharge of dredge or fill material into waterways or wetlands of the United States. To date, BNSF has not received a response from the Corps regarding the need for a permit under Section 404 of the Clean Water Act.

BNSF does not intend to appreciably remove or alter the contour of the roadbed underlying the rail line, and disturbed areas will be limited to the right-of-way wherever possible. The railroad also has no plans to undertake in-stream work or dredge and/or fill any materials in connection with the proposed abandonment. However, OEA review concludes that the line passes through a 100-year floodplain.<sup>2</sup> Accordingly, we have included the appropriate offices of the Corps and the Federal Emergency Management Agency (FEMA) on the service list for this proceeding to ensure that they receive a copy of this Environmental Assessment.

---

<sup>2</sup> FEMA Mapping Information Platform, <https://hazards.fema.gov/femportal/wps/portal> (last visited August 21, 2012).

BNSF states that there are no known hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is necessary.

Pursuant to Section 7 of the Endangered Species Act at 50 C.F.R. § 402, OEA conducted a search of the U.S. Department of the Interior, Fish and Wildlife Service (FWS) Endangered Species Database to identify any Federally listed endangered or threatened species that may be present in the project area.<sup>3</sup> The search indicated that the following endangered, threatened, and candidate species may be present in the vicinity of the proposed project:

- Yellow-billed Cuckoo (*Coccyzus americanus*)- Candidate
- Mexican spotted owl (*Strix occidentalis lucida*)- Threatened
- Southwestern willow flycatcher (*Empidonax traillii extimus*)- Endangered
- Zuni bluehead Sucker (*Catostomus discobolus yarrow*)- Candidate
- Zuni fleabane (*Erigeron rhizomatus*)- Threatened
- Black-footed ferret (*Mustela nigripes*)- Endangered

BNSF believes that the proposed abandonment would not have an adverse effect on any of the species listed above due to a lack of suitable habitat within and adjacent to the project area.

In its comments, the Bureau of Land Management (BLM) states that there is no designated critical or potential habitat located within the portion of the project area on BLM managed lands. However, BLM also states that a review of the project by the Navajo Nation Natural Heritage Program would be required in order to determine potential impacts to biological resources on tribal lands. Accordingly, OEA is recommending a condition requiring BNSF to consult with the Navajo Nation Natural Heritage Program and report the results of these consultations in writing to OEA prior to beginning any salvage activities.

The National Park Service states that it has no comment on the proposed project. OEA review confirms that the Line is not located in or adjacent to any local or national park; wildlife sanctuary or refuge; or other protected area. Accordingly, no mitigation regarding protected areas is recommended.

In its comments, the National Geodetic Survey notes that there are no geodetic survey markers located in the project area. Accordingly, no geodetic survey markers would be affected by the proposed abandonment.

BNSF states that it believes the proposed abandonment to be consistent with existing local land use plans.

---

<sup>3</sup> U.S. Fish and Wildlife Service, Endangered Species Database, <http://www.fws.gov/endangered/species> (last visited September 10, 2012).

In its comments, NMED recommends that BNSF take appropriate measures to control the release of fugitive dust, particulates, and excess noise associated with the proposed abandonment. OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that salvage activities would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this EA to the following agencies for review and comment: U.S. Army Corps of Engineers; the Navajo Nation Natural Heritage Program; FEMA; and NMED.

## **HISTORIC REVIEW**

According to BNSF, the Line was constructed to service the McKinley Mine, owned by Chevron Mining Inc. During its years of operation, traffic on the Line consisted of unit coal trains originating at the mine. Since the mine's closure in February 2010, there has been no traffic on the Line.

The Line is approximately 5.11 miles long with a right of way that averages 200 feet in width in rural areas and 400 feet at station locations. The only structure on the Line is a bridge located at Milepost 16.10. The bridge is 252 feet long, 20 feet high and is constructed of ballast deck plate girder and timber spans. BNSF states that the structure was built in 1974.

In its analysis, OEA did not identify any historic places in the area that would potentially be affected by the proposed abandonment.<sup>4</sup> However, our review indicates that BNSF failed to notify the New Mexico Historic Preservation Division of the Department of Cultural Affairs (State Historic Preservation Office or SHPO) of the proposed abandonment as required under 49 C.F.R. § 1105.8(c). Because the SHPO has not had the opportunity to offer its comments, OEA is unable to make an official determination of the potential impacts of the abandonment on places listed or eligible for listing in the National Register of Historic Places (National Register). The Navajo Nation Historic Preservation Department (Tribal Historic Preservation Office or THPO) has also not submitted comments regarding the potential impact of the proposed projects on historic and cultural resources on tribal lands.<sup>5</sup>

Accordingly, we are recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites,

---

<sup>4</sup> National Register of Historic Places Online Database, <http://nrhp.focus.nps.gov/natreg/docs/Download.html> (last visited September 10, 2012)

<sup>5</sup> THPOs are designated by the U.S. Department of the Interior to oversee the historic review process on tribal lands. As the tribal counterpart to the SHPO, the THPO may assume some or all of the duties for historic preservation on tribal lands that SHPO performs on private, state or Federal lands.

buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Historic Preservation Act, Section 106 process in consultation with the SHPO and THPO pursuant to 36 C.F.R. § 800.4(d)(1). 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>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.<sup>6</sup> In addition to the Navajo Nation, the database indicated that the following Federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment:

- Pueblo of Acoma in New Mexico;
- Pueblo of Laguna in New Mexico;
- Ramah Navajo Chapter; and
- Zuni Tribe of the Zuni Reservation in New Mexico

Accordingly, OEA is sending a copy of this EA to these tribes for review and comment.

## **CONDITIONS**

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

- 1. Prior to commencement of any salvage activities, the BNSF shall consult with the Navajo Nation Natural Heritage Program regarding potential impacts from salvaging activities to Federally listed threatened and endangered species that may occur in the vicinity of the Line. The railroad shall report the results of these consultations in writing to the Board's Office of Environmental Analysis prior to the onset of salvage operations.**
- 2. BNSF Railway Company (BNSF) shall 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. BNSF shall report back to the Office of Environmental Analysis regarding any consultations with the New Mexico Historic Preservation Division of the Department of Cultural Affairs, the Navajo Nation Historic Preservation Department, any other Section 106 consulting parties that have been identified, and the public. BNSF may not file its consummation notice or initiate**

---

<sup>6</sup> Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited September 10, 2012).

**any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**

## **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 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 would 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 10 days of publication of the notice of 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 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, 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 Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, [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. 485X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at [waylandj@stb.dot.gov](mailto:waylandj@stb.dot.gov).

Date made available to the public: September 24, 2012.

**Comment due date: October 9, 2012.**

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