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SERVICE DATE - MARCH 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34305

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY — CONSTRUCTION AND OPERATION EXEMPTION —  
MERCED COUNTY, CA

Decided: March 3, 2004

By decision served on March 28, 2003, the Board conditionally approved an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for The Burlington Northern and Santa Fe Railway Company (BNSF) to construct and operate an 850-foot line of railroad in Merced County, CA. The proposed line would connect to the BNSF Stockton Subdivision main line between Stockton and Bakersfield, CA, and extend to the Quebecor World Inc. printing and distribution facility in Merced, CA. The Board stated that, upon completion of the environmental review process, a final decision would be issued addressing the environmental impacts of the proposal and, if appropriate, making the exemption effective at that time.

An environmental assessment (EA), prepared by the Board's Section of Environmental Analysis (SEA), was served on November 7, 2003. In the EA, SEA preliminarily concluded, based on the information provided from all sources as of the date of the EA as well as its independent analysis, that the construction and operation of BNSF's proposed rail line would not significantly affect the quality of the human environment if the mitigation measures recommended in the EA were imposed. Comments on the EA were due on December 10, 2003.

Comments were filed by: the U.S. Environmental Protection Agency - Region IX; California Department of Parks and Recreation - Office of Historic Preservation (SHPO); Merced County; City of Merced; Merced Irrigation District; and Mr. Edward A. Ketchum (member of the Amah Mutsun Band of Ohlone/Costanoan Indians, California). BNSF replied to some of the comments. After considering the comments to the EA and the reply, SEA prepared a Post EA in which it recommends three additional mitigation measures and modification of a previously recommended mitigation measure.

The three additional mitigation measures are as follows. First, with respect to Merced County's concern about potential encroachment on its portion of Santa Fe Road, SEA recommends the addition of mitigation measure 10, which would require BNSF to obtain an Encroachment Permit from the County Department of Public Works, Road Division, if project plans change and work within the County right-of-way occurs. Second, to address the SHPO's concerns, SEA recommends the

addition of a new condition 16, which would require BNSF to notify the SHPO and the Board in certain circumstances that could affect historic properties. Third, in response to Mr. Ketchum's concerns, SEA recommends the addition of mitigation measure 17 to require BNSF to provide tribal notification through Mr. Ketchum in the event cultural or archaeological resources are encountered during construction. Finally, SEA recommends modification of its previously recommended mitigation measure 4 pertaining to revegetation activities to require BNSF to revegetate using a native seed mix consistent with Executive Order 13112.

After carefully reviewing the environmental record, the Board agrees with SEA's conclusion that, with the recommended mitigation, the construction and operation of this line would have no significant environmental effects. The Board will adopt SEA's final recommended environmental mitigation measures, with minor clarifying changes, as set forth in the Appendix to this decision, and impose them as a condition to the exemption. By letter filed on January 20, 2004, BNSF requests that, upon completion of the environmental review, the Board authorize the construction effective on the service date of the decision, if appropriate. Inasmuch as the construction and operation of this 850-foot line, as mitigated, will present no significant environmental effects, it is reasonable to make this decision effective 10 days from the date of service.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Board adopts the environmental mitigation measures set forth in the Appendix to this decision, and imposes them as a condition to the exemption granted in this proceeding.
2. The exemption conditionally approved in the March 28, 2003 decision is granted, subject to the condition that BNSF comply with the mitigation measures adopted in this decision as set forth in the Appendix.
3. This decision is effective on March 14, 2004.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary

**APPENDIX**

**ENVIRONMENTAL MITIGATION MEASURES**

1. The Burlington Northern and Santa Fe Railway Company (BNSF) shall limit construction activities and vegetation clearing to the railroad right-of-way.
2. BNSF shall ensure that all construction debris is removed and disposed of in a proper and legal manner consistent with state and local disposal procedures.
3. BNSF will employ Best Management Practices to prevent erosion within the project area.
4. BNSF shall reseed the right-of-way outside the subgrade slope with native grasses and other appropriate native vegetation that are in compliance with Executive Order 13112.
5. Prior to construction, BNSF shall survey the construction area for burrowing owls, Swainson's hawks and giant garter snakes. See Section 3.7.3 of the Environmental Assessment for further detail regarding required surveys for these species.
6. BNSF shall maintain construction and maintenance vehicles in good working order with properly functioning mufflers to control emissions and noise.
7. BNSF shall notify the California State Historic Preservation Office if any cultural or archaeological resources are discovered during construction.
8. Should a spill occur, BNSF shall follow the appropriate emergency response procedures outlined in its Emergency Response Plan and ensure the spill is cleaned up according to all applicable Federal, state, and local regulations.
9. During construction, BNSF shall place temporary fences ten feet from the top of the bank at Black Rascal Creek.
10. BNSF shall obtain an Encroachment Permit from the County Department of Public Works, Road Division, if project plans are revised and work is required within the Santa Fe Road right-of-way west of Black Rascal Creek.
11. BNSF shall coordinate at-grade crossing construction with the California Public Utilities Commission and the City of Merced in order to minimize traffic delay during crossing

construction. BNSF shall use appropriate signs and barricades to control traffic during construction.

12. BNSF shall install, at its sole cost, active rail/highway grade warning devices consisting of pole and cantilever mast mounted flashing lights and gates at Santa Fe Road, and adhere to its representation that it will comply with the requirements of the California Public Utilities Commission.
13. BNSF shall coordinate the removal or raising of the telephone lines at the Santa Fe Road crossing with the local telephone company.
14. BNSF shall comply with all applicable Federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment as appropriate.
15. If cultural materials are encountered during construction, project activities shall cease until a qualified archaeologist can evaluate the materials.
16. BNSF shall notify the California State Historic Preservation Office and the Board if:  
(1) the undertaking changes in ways that could affect historic properties; (2) previously undocumented properties are discovered during implementation or if a known historic property would be affected in an unanticipated manner; (3) a property that was to be avoided has been inadvertently or otherwise affected; or (4) any component of the undertaking, such as a delay in implementation or implementation in phases, may justify reconsideration of the current National Register status of the properties within the undertaking's Area of Potential Effects.
17. BNSF shall notify Mr. Edward A. Ketchum if any cultural or archaeological resources are discovered during construction.