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SERVICE DATE – JUNE 28, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 459X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA

Decided: June 27, 2007

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.20-mile line of railroad extending between Engineering Station 73 + 58 and Engineering Station 84 + 26 in Seattle, King County, WA. Notice of the exemption was served and published in the Federal Register on May 31, 2007 (72 FR 30431). The exemption is scheduled to become effective on June 30, 2007.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on June 5, 2007. In the EA, SEA states that, at the request of the U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office (USFWS), BNSF provided a species list for King County to USFWS for review. SEA states that, to date, the USFWS has not submitted its conclusions determining the impact the proposed abandonment would have on the Federally listed species and, therefore, recommends that BNSF be prohibited from performing any salvage activities and consummating abandonment until completion of the section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535) with the USFWS, that BNSF be required to report the results of any consultation with the USFWS to SEA in writing, and that, should any potential impacts be identified, BNSF be required to consult with SEA and USFWS to develop appropriate mitigation measures.

SEA points out that the U.S. Army Corps of Engineers (Corps) advised that, due to the lack of the site-specific wetlands or floodplains data, the Corps was unable to conclude whether the proposed abandonment would require a permit under section 404 of the Clean Water Act (33 U.S.C. 1344). Therefore, SEA recommends that, prior to commencement of any salvage activities, BNSF be required to consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of the Corps.

SEA states that the proposed abandonment is located within Washington's designated coastal zone and is subject to Federal consistency review. SEA recommends that BNSF be prohibited from performing any salvage activities until the Federal consistency certification and concurrence process is completed pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.

No comments to the EA were received by the June 19, 2007 due date. Therefore, the environmental conditions recommended by SEA in the EA will be imposed.

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. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that BNSF shall: (1) be prohibited from performing any salvage activities and consummating abandonment until completion of the section 7 consultation process of the Endangered Species Act (16 U.S.C. 1535) with the USFWS, report the results of any consultation with the USFWS to SEA in writing, and should any potential impacts be identified, consult with SEA and USFWS to develop appropriate mitigation measures; (2) prior to commencement of any salvage activities, consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of the Corps; and (3) be prohibited from performing any salvage activities until the Federal consistency certification and concurrence process is completed pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary