

#E1-25517

Wood, Diana

From: Wood, Diana
Sent: Wednesday, November 09, 2016 6:29 AM
To: Waterstrat, Teal
Subject: Re: Response to request for consultation under the ESA regarding the BNSF railway in Thurston County WA

AB 6 492X

Thanks Teal!

From: Waterstrat, Teal <teal_waterstrat@fws.gov>
Sent: Tuesday, November 8, 2016 5:50:37 PM
To: Wood, Diana
Subject: Re: Response to request for consultation under the ESA regarding the BNSF railway in Thurston County WA

Sorry Diana:

Frogs in the Black River Drainage typically get to the breeding sites by mid January and have laid the last of their egg masses by the end of March.

On Tue, Nov 8, 2016 at 2:28 PM, Wood, Diana <Diana.Wood@stb.gov> wrote:
Hi Teal:

Thanks so much for the quick response. I will recommend the BMPs that you suggest, but did have one question regarding the breeding season. Does the breeding season occur between January and March, or is this the acceptable time to salvage the rail line?

Thanks!!!!

Diana

From: Waterstrat, Teal <teal_waterstrat@fws.gov>
Sent: Tuesday, November 8, 2016 4:15:58 PM
To: Wood, Diana
Subject: Response to request for consultation under the ESA regarding the BNSF railway in Thurston County WA

Good Evening Ms. Wood:

Thank you for the conversation regarding the project to salvage rail and ties from 1.43 miles of abandoned Burlington Northern – Santa Fe railroad tracks from milepost 14.57 to 16.0 in Thurston County

,
Washington State

and permitting needs for the Oregon spotted frog

and other federally listed species and critical habitat for this project on November 8, 2016.

This

email

transmits the Service's technical assistance for this project and responds to the Surface Transportation Board's requests from February 12 to November 8, 2016 for the U.S. Fish and Wildlife Service (Service) concurrence on your no effect determination under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Under the section 7 regulations (50 CFR 402.14), Federal agencies are required to determine whether their actions may affect listed species or critical habitat. If an adverse effect determination is made, formal consultation is required, unless the Service concurs that the action is not likely to adversely affect listed species or critical habitat (50 CFR 402.13).

However, should the action agency determine that there would be no effect to listed species or critical habitat, there is no regulatory requirement for Service concurrence. Therefore, we recommend that you document your analyses of effects to listed species and critical habitat, and maintain that documentation as part of your project files.

The project has been described as the removal of tracks, ties, and other materials from the surface of the railroad without in water work or resulting impact to water quality. The project description also states that the railroad right of way and ballast (typically a crushed stone matrix upon which railroad ties are laid) will remain intact. The project does occur within suitable habitat and critical habitat for the Oregon spotted frog. However the project itself is limited to the existing railroad grade which is not where Oregon spotted frogs would occur.

The conservation and best management practices you have indicated will be applied during the project are to the best of our understanding sufficient to protect water quality and Oregon spotted frog habitat. These include sediment control

,
reseeding practices

, and restricting all actions to the railway ballast and pre existing transportation routes in good order.

There are several recommendations that the Service might make if we were designing a similar project in Oregon spotted frog habitat.

- The Service would advise the contractors not to throw vegetative

or other

debris in standing water outside of the grade prism; however placing non reactive or organic materials in water with care would be acceptable.

- The Service prefers that the creosote treated ties be disposed of at a certified upland waste disposal facility and not be sold for reuse.
- Limit the salvage work outside the Oregon spotted frog breeding season in the Black River drainage (mid-January to the end of March).

Thank you for reaching out to the US Fish and Wildlife Service about this project. We appreciate your interest and concern of our federally threatened and endangered species and look forward to working with you more in the future.

If you have any questions regarding this letter, please contact Curtis Tanner at (360) 753-4326, Martha Jensen at (360) 753-9426, or Teal Waterstrat (360) 753-7760, of this office.

Sincerely

--

F. Teal Waterstrat

Fish and Wildlife Biologist
Office 360-753-7760
Cell: 360-789-8504

USFWS; Washington Field Office
510 Desmond Drive SE
Lacey, WA 98503
<http://www.fws.gov/wafwo>

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F. Teal Waterstrat

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Wood, Diana

From: Wood, Diana
Sent: Friday, November 04, 2016 1:47 PM
To: 'shirley_burgdorf@fws.gov'
Cc: Wood, Diana
Subject: FW: AB 6 (Sub-No. 492X) - BNSF Abandonment in Thurston County, Wa
Attachments: AB 6 (Sub-NO. 492X).docx; EO-2799 USFWS Correspondence.pdf

From: Wood, Diana
Sent: Friday, November 04, 2016 1:40 PM
To: shirley.burgdorf@fws.gov
Cc: gibelr@co.thurston.wa.us; Wood, Diana <Diana.Wood@stb.gov>
Subject: FW: AB 6 (Sub-No. 492X) - BNSF Abandonment in Thurston County, Wa

Dear Shirley:

I've spoken with Thurston County regarding the above referenced abandonment proceeding. It is my understanding that the County is in the process of negotiating a trail use agreement with BNSF and will be conducting salvage of the rail line. As part of the agreement, Thurston County has indicated that it will be using best management practices (silt fences, vegetative stabilization, etc.) to protect downstream water resources and species and/or habitat of concern. In addition, because the roadbed, ballast and bridges would remain intact, I believe that salvage operations would have "no effect" on the Oregon spotted frog habitat.

Please let me know if you agree with this finding at your earliest convenience so that the Board can remove the Section 7 condition and the line can be salvaged. Any future activities, such as the development of a trail, are not part of this abandonment proceeding and would require additional permits, as necessary.

Thanks so much!

Diana Wood
202-245-0302

From: Wood, Diana
Sent: Friday, November 04, 2016 10:26 AM
To: 'parsons@co.thurston.wa.us' <parsons@co.thurston.wa.us>
Cc: Wood, Diana <Diana.Wood@stb.gov>
Subject: FW: AB 6 (Sub-No. 492X) - BNSF Abandonment in Thurston County, Wa

From: Wood, Diana
Sent: Friday, November 04, 2016 10:12 AM
To: parsonst@co.thurston.wa.us

Cc: Wood, Diana <Diana.Wood@stb.gov>

Subject: AB 6 (Sub-No. 492X) - BNSF Abandonment in Thurston County, Wa

Dear Ms. Parsons:

I'm sorry to have missed your call yesterday but I have very early hours and may be hard to reach, given the three hour time difference. In response to your salvage questions in the above referenced abandonment, I'm sending you information from BNSF regarding USFWS's concerns about potential disturbance to the Oregon spotted frog habitat. As you can see from the attached email thread, BNSF's salvage procedure - which would retain the underlying roadbed, ballast and bridges - would have minimal impact to the protected species of concern and its habitat.

I hope this responds to your questions. Please call or email if you have additional questions or concerns.

Sincerely,

Diana Wood

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington DC 20423
202-245-0302
Diana.Wood@stb.gov

#EO-2799



**Re: Fw: RE: BNSF Railway Abandonment, Section 7 Consultation Code
01EWF00-2016-SLI-0092**

Diana Wood Karl Morell
Diana Wood

05/31/2016 01:44 PM

Karl:

I just spoke with Shirley Burgdorf and she would like to know if the bridges will be removed, and if so, for you to explain the process here, as Oregon spotted frog habitat would likely be affected. Also, she would like for you to explain the limit of disturbance, as the low lying portions of the right-of-way along the drainage conveyances contain Oregon spotted frog habitat. Shirley said that, depending upon your response, this process could result in a "no adverse effect" finding; require temporal restrictions; or result in formal Section 7 consultation.

I mentioned to Shirley that Thurston County has submitted a public use and a trail use request, and that if either process moves forward, the abandonment, including conditions, will be held in abeyance.

Thanks!

Diana

Diana F. Wood
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Diana Wood

Shirley: BNSF has provided the response belo...

05/27/2016 06:15:50 AM

From: Diana Wood/STB
To: shirley_burgdorf@fws.gov
Cc: "Karl Morell" <karlm@karlmorell.com>
Date: 05/27/2016 06:15 AM
Subject: Fw: RE: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Shirley:

BNSF has provided the response below to your questions regarding the salvage procedure. Based on this description, we believe that the effect would be minimal. Please let me know if you concur with a no adverse effect finding, or whether temporal restrictions need to be implemented for protection of Oregon spotted frog habitat.

Regards,

Diana

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-----Forwarded by Diana Wood/STB on 05/27/2016 06:02AM -----

To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>

From: Karl Morell <karlm@karlmorell.com>

Date: 05/26/2016 05:06PM

Subject: RE: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Diana, the following responds to the questions from F&WS:

1. The salvage company selected by BNSF will be required to use specialized (heavy) equipment to remove the tracks and ties. But that equipment will be brought to the site along BNSF's right-of-way and will not disturb any vegetation adjacent to the right-of-way.
2. Vegetation removal adjacent to the right-of-way should not be required to gain access to the site. It appears, however, that there is some vegetation within the tracks and ties that will need to be disturbed in order to remove the tracks and ties. The amount of such disturbance will not be precisely known until a salvage company has been selected.
3. The track will be reused, rerolled or sold as scrap depending on the quality of the rail. The good quality ties will be re-used by BNSF, landscape quality ties will be sold to lumber dealers for landscaping and scrap ties will be shipped by BNSF to a nearby EPA-approved disposal site.
4. It is unlikely that erosion control BMPs will be necessary but BNSF would be willing to require the salvage company to use such controls if necessary.

The July 29, 2015 letter from BNSF to F&WS addresses these questions.

From: Diana.Wood@stb.dot.gov [mailto:Diana.Wood@stb.dot.gov]

Sent: Thursday, May 19, 2016 6:46 AM

To: Karl Morell <karlm@karlmorell.com>

Subject: Fw: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Karl:

Can you respond to USFWS's questions below (in this email thread) and I'll forward your response onto USFWS so we can keep the process moving.

Thanks!

Diana

Diana F. Wood

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----- Forwarded by Diana Wood/STB on 05/19/2016 06:41 AM -----

From: "Burgdorf, Shirley" <shirley_burgdorf@fws.gov>
To: <Diana.Wood@stb.dot.gov>
Date: 05/17/2016 06:14 PM
Subject: Re: Fw: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Hi Diana,

Thanks for the email and information about the project. I have a few questions and want to clarify a few things about the official consultation process.

Your email and letter ask for initiation of consultation for the project; however, we (USFWS) can't officially start the consultation until we have a biological assessment (or other document) with all the specifics about the project. Contacting us early in the process is great and helps everyone know what is coming and what we need to do. I just did not want a misunderstanding of when we can 'start the clock' to have a response back to you within the desired 30 days if an informal consultation is necessary.

From your description, it does sound like any effects will be minimal. Because the project is adjacent to suitable Oregon spotted frog habitat, I need more information about how the ties and rails will be removed. The following are just a few questions I have:

- 1) Will the work be done with heavy equipment brought to the site?
- 2) Is any vegetation removal necessary for new access routes to the site?
- 3) Where will the creosote railroad ties and the rails be disposed of?
- 4) Will standard erosion control BMPs be in use?

If it is determined that the proposed project will have "no effect" on ESA species, then consultation is not required. The determination of "no effect" to listed resources rests with the action agency. The USFWS has no regulatory or statutory authority for concurring with a "no effect" determination.

Please contact me if you have any questions.
Shirley

Shirley Burgdorf
Fish & Wildlife Biologist
U.S. Fish & Wildlife Service
510 Desmond Dr. SE, Suite 102
Lacey, WA 98503
360/534-9340

On Tue, May 10, 2016 at 7:17 AM, <Diana.Wood@stb.dot.gov> wrote:

Here are two aerial photos from BNSF to add to the email attachments below.

Diana F. Wood
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----- Forwarded by Diana Wood/STB on 05/10/2016 10:15 AM -----

From: Diana Wood/STB
To: shirley_burgdorf@fws.gov
Cc: Diana Wood/STB@STB, "Karl Morell" <karim@karlmorell.com>
Date: 05/10/2016 09:47 AM
Subject: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Dear Ms. Burgdorf:

I'm in the process of preparing an environmental assessment for abandonment of a 1.43 mile segment of BNSF rail line in Thurston WA. In 2015, BNSF's attorney, Karl Morell, contacted you to determine the possible presence of threatened, endangered, and proposed species, as well as designated and proposed critical habitats and candidate species. A list of species was subsequently generated, and it appears that there may be 12 species present in or near the project area, and that a biological evaluation may be required. This email (and a formal letter to follow in the mail) initiates the Section 7 consultation process and designates BNSF as a non-federal representative to conduct any studies, as needed. BNSF anticipates that no ground disturbance would occur as a result of the abandonment because salvage would involve removing the rail line only (track, ties, and other appurtenances) but not the ballast or roadbed. Therefore, it's not clear what, if any, adverse impacts would occur on ESA species.

The EA will be served on Monday, May 16th, and I'll send you a copy then, but in the meantime, am sending the above referenced letter as well as the species list so we can start discussing what is expected to resolve this process as quickly as possible.

Thanks so much for your consideration in this matter.

Regards,

Diana Wood

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