



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

In Reply Refer To:  
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NOV 22 2016  
#E1-25646

Diana F. Wood  
Office of Environmental Analysis  
Surface Transportation Board  
395 E Street SW Room 1110  
Washington, DC 20423

Dear Ms. Wood:

Subject: Burlington Northern – Santa Fe Railway Company Abandonment Exemption

Thank you for the conversation on November 8, 2016 regarding a proposal to salvage rail and ties from 1.43 miles of abandoned Burlington Northern – Santa Fe railroad tracks from mile post 14.57 to 16.0 in Thurston County, Washington, and permitting needs for the Oregon spotted frog (*Rana pretiosa*) and other federally listed species and critical habitat for this project.

This letter transmits the U.S. Fish and Wildlife Service's (Service) technical assistance for this project and responds to the Surface Transportation Board's requests from February 12 to November 8, 2016 for the Service's 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 effects to listed species or critical habitats, there is no regulatory requirement for Service concurrence. Since you made a no effect determination, 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 corridor without in-water work or resulting impact to water quality. The project description also states that the railroad grade, right-of-way corridor and surface (typically a crushed stone matrix upon which railroad ties are laid) will remain intact. Based on the information provided, the surface of the railroad grade is not within potentially suitable or designated critical habitat or in areas where Oregon spotted frogs would occur.

The conservation and best management practices you have indicated will be applied to clear access to and remove ties and tracks are to the best of our understanding sufficient to protect water quality and Oregon spotted frog habitat that may be present adjacent to the work areas. These include sediment control and reseeded practices. The Service is providing the following recommendations to avoid impacting Oregon spotted frog habitat near the project area:

- The Service recommends that you advise the contractors not to throw vegetative debris in standing water outside of the grade prism; however placing it in the 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 of the Oregon spotted frog breeding season in the Black River drainage (mid-January to the end of March).

Thank you for reaching out to us 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,

*for* *Martha L. Jensen*

Eric V Rickerson, State Supervisor  
Washington Fish and Wildlife Office