



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

September 26, 2019

Robert F. Appleman, P.L.A.
Deputy State Historic Preservation Officer
Illinois Historic Preservation Office
One Natural Resources Way
Springfield, IL 62702-1271

Re: STB Docket No. AB 6 (Sub-No. 486X), BNSF Railway Company—
Abandonment Exemption—In Fulton County, Ill.; **Determination of Adverse
Effect**; SHPO LOG #009101512

Dear Mr. Appleman:

I am writing to inform you of an Adverse Effects determination we have made in the rail abandonment proceeding captioned above. As described in detail below, the Surface Transportation Board granted the rail line abandonment subject to a condition requiring the abandoning railroad, BNSF Railway (BNSF), to retain its interest in and take no steps to alter an historic stone arch bridge and the tracks and ties that ran along the top of the bridge. It appears that BNSF did not include the exact language of the condition in the salvage contract with the result that the tracks and ties on the stone arch bridge were removed by the salvage contractor. No part of the structure of the stone arch bridge was removed or altered. We are now concluding that that abandonment of this rail line constitutes an adverse effect.

Background

On January 4, 2013, BNSF filed a notice of exemption with the Surface Transportation Board (Board) seeking to abandon a line of railroad located in Fulton County, Illinois. The rail line proposed for abandonment extends from milepost 52.2 in Farmington to milepost 66.7 in Dunfermline, a distance of 14.5 miles. Beginning in 2013, the Canton Park District (District) filed a Request for Public Use Condition and Request for Interim Trail Use to provide time for the District to negotiate conversion of the rail line to a trail. The parties continue to negotiate but at present, no agreement on trails use has been reached.

BNSF prepared an historic report as required by the Board's environmental rule. The report indicated that the rail line proposed for abandonment contained two bridges over 50 years

of age, one a stone arch bridge circa 1860. By letter dated October 26, 2012, SHPO referred to an earlier letter from November 2005 stating that the stone arch bridge is eligible and that the proposed abandonment would have No Adverse Effect, subject to stipulations that would be included in a preservation covenant.¹

Section 106 Condition

The Board's Office of Environmental Analysis (OEA) issued an Environmental Assessment for the project on January 29, 2013, which recommended that the Board impose a Section 106 condition on any decision granting abandonment authority. The condition stated that:

BNSF Railway Company (BNSF) shall retain its interest 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 or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act [NHPA], 16 U.S.C. 470f has been completed.... BNSF may not file its consummation notice or initiate 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.

The Board imposed this condition in a decision approving the rail abandonment dated May 24, 2013.

In a supplemental final Environmental Assessment dated December 8, 2016, OEA stated that BNSF submitted a letter on November 30, 2016, requesting that the Section 106 condition be modified to include only the stone arch bridge at milepost 52.86, allowing it to salvage the rest of the line; the Board issued a decision on March 21, 2016 (Docket No. AB 6 (Sub-No. 486X, BNSF Ry.—Aban. Exemption—in Fulton Cty., Ill.) imposing the modified Section 106 condition on its grant of abandonment authority on BNSF. The revised condition required BNSF to “take no steps to alter the historic integrity of the stone arch bridge” and to “not initiate any salvage activities related to the abandonment (including removal of tracks and ties) of the stone arch bridge” until the Section 106 process has been completed and the Board has removed the condition.

Adverse Effect Determination

Recently, OEA heard that the tracks and ties on the entire rail line have been removed, including approximately 100 feet along the top of the historic stone arch bridge, in contravention of the Board's order. Other than the removal of the tracks and ties, the bridge has not been affected. OEA is in discussions with the legal department of BNSF to understand why salvage was not conducted in compliance with the Board's order. The latest information from BNSF

¹ Because rail property is privately owned, the agency does not have the power to impose a restrictive covenant upon the deed as a condition to obtaining abandonment authority. See Implementation of Environmental Laws, 7 I.C.C.2d 807 (1991) at 829.

indicates that the salvage contract between BNSF and the salvage contractor failed to contain the language prohibiting salvage of the rail line across the top of the stone arch bridge.

As part of the Section 106 process, OEA has determined that because the Board cannot impose a restrictive covenant on the railroad and because the tracks and ties were removed from the historic stone arch bridge, there is an Adverse Effect to the resource. Thus, the abandonment has an Adverse Effect on historic properties.

OEA is continuing to consult with Mr. Anthony Rubano of your office as we work together through the Section 106 process. We will be sending an Adverse Effects Determination Letter and a Request to Participate in the Section 106 Process to the Advisory Council on Historic Preservation in the near future. We are discussing several options for resolving the adverse effects and will be consulting with the public.

If you have any questions, require additional information regarding this proceeding, or have any concerns, please do not hesitate to contact me or Alan Tabachnick of my staff by telephone at (202) 245-0367 or email at Alan.Tabachnick@stb.gov. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" written in a larger, more prominent script than the last name "Rutson".

Victoria Rutson
Director
Office of Environmental Analysis

Cc: Jill Rugema, BNSF