

SERVICE DATE – NOVEMBER 1, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 499X)]

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN LOS ANGELES
COUNTY, CAL.

Decided: November 1, 2019

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its freight rail easement over an approximately 5.93-mile line of railroad on the Harbor Subdivision, between approximately milepost 2.1 and approximately milepost 7.95, in Los Angeles County, Cal. (the Line).¹ Notice of the exemption was served and published in the Federal Register on July, 15, 2019 (84 Fed Reg. 33,798). The exemption became effective on August 14, 2019.

By decision served on August 13, 2019, the proceeding was reopened and the Board imposed a salvage-related condition and a historic preservation condition under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, recommended by the Board's Office of Environmental Analysis (OEA). The Section 106 condition required BNSF and LACMTA to retain their interest in 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 for listing or listed in the National Register of Historic Places until the Section 106 process has been completed; required BNSF and LACMTA to report back to OEA regarding any consultations with the California State Parks, Office of Historic Preservation (i.e., State Historic Preservation Office or SHPO) and the public; and prohibited BNSF from filing its consummation notice and LACMTA from initiating any salvaging activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a Supplemental Final EA dated August 20, 2019, OEA stated that on August 15, 2019, it received a copy of a letter to BNSF from the SHPO. In the letter, dated August 13, 2019, the SHPO stated that the Line is ineligible for the National Register and that the proposed abandonment would not affect historic properties. The SHPO advised, however, that unanticipated discoveries could impose future responsibilities under Section 106. Accordingly,

¹ In its verified notice, BNSF states that the physical assets of the Line are owned by the Los Angeles County Metropolitan Transportation Authority (LACMTA). According to BNSF, the Line is part of a group of rail lines acquired by a predecessor of LACMTA. See Los Angeles Cty. Transp. Comm'n—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., FD 32172 (ICC served Dec. 2, 1992).

OEA recommends that the Section 106 condition imposed in the August 13, 2019 decision be removed and a new condition be imposed. Specifically, OEA recommends that, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage activities, BNSF and LACMTA shall immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federally recognized tribes, BNSF, LACMTA, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Accordingly, based on OEA's recommendation, this proceeding will be reopened, the previously imposed Section 106 condition will be removed, and the newly recommended unanticipated discoveries condition will be imposed.

The proposed abandonment, if implemented as conditioned, 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 Section 106 historic preservation condition imposed in the August 13, 2019 decision is removed. Further, the exemption is subject to the following additional condition: In the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage activities, BNSF and LACMTA shall immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federal recognized tribes, BNSF, LACMTA, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.