

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: August 13, 2019

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 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 is scheduled to become effective on August 14, 2019.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on July 19, 2019, recommending that two conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the National Geodetic Survey (NGS) commented that geodetic survey markers still present in the area could be disturbed by the proposed abandonment and provided a link to its web-based program that contains a searchable database and map of geodetic marker locations. OEA searched the database and found that there could be geodetic station markers within the rail line right-of-way proposed for abandonment. Accordingly, OEA recommended a condition that would require BNSF and LACMTA to consult with the NGS Regional Geodetic Advisor prior to beginning salvage activities and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

OEA also stated that BNSF submitted a historic report as required by 49 C.F.R. § 1105.8(a) and provided a copy to the California State Parks, Office of Historic Preservation (i.e., State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). BNSF did not specify when the Line was constructed; however, it identified five culverts as being 50 years old or older and stated that the oldest culvert dates to 1923. The SHPO had not responded to BNSF's historic report at the time the EA was prepared. Therefore, OEA was not able to consider the SHPO's opinion before determining if the Line may be eligible for listing on the

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).

National Register of Historic Places. Accordingly, OEA recommended a condition: (1) requiring BNSF and LACTMA 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 of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed, (2) requiring BNSF and LACTMA to report back to OEA regarding any consultations with the SHPO and the public; and (3) prohibiting 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.

OEA issued its Final EA on August 9, 2019, indicating that OEA received one comment during the comment period, a correspondence from NGS on August 6, 2019. NGS stated that up to 41 geodetic station markers could be impacted by the proposed abandonment. Accordingly, OEA continues to recommend imposing the condition regarding geodetic station markers as well as the previously recommended section 106 condition.

Accordingly, based on OEA's recommendation, the two conditions proposed in the final EA will be imposed.

This decision, and 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 notice served and published in the Federal Register on July 15, 2019, exempting the abandonment of the Line described above, is subject to the conditions that: (1) BNSF and LACMTA shall consult with the NGS Regional Geodetic Advisor prior to beginning salvage activities and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and (2) BNSF and LACTMA shall 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 of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed; BNSF and LACTMA shall report back to OEA regarding any consultations with the SHPO and the public; and BNSF may not file its consummation notice and LACMTA may not initiate 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 this condition.

3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.