

SERVICE DATE – NOVEMBER 23, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 477X)

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

Decided: November 22, 2011

By decision served on September 16, 2011, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by BNSF Railway Company (BNSF) of its rail freight service easement over 4.85 miles of rail line (the Line) owned by Los Angeles County Metropolitan Transportation Authority, and the Board exempted the abandonment from the offer of financial assistance provisions of 49 U.S.C. § 10904. The Line extends between milepost 119.35,¹ just east of the San Gabriel River, in Irwindale, and milepost 124.20, just east of the Santa Anita Blvd. grade crossing, in Arcadia, in Los Angeles County, Cal. The abandonment exemption became effective on October 16, 2011, subject to five environmental conditions² and standard employee protective conditions.

One of the conditions imposed in the September 16 decision, condition no. 4, addresses federally threatened and endangered species. That condition requires, among other things, that BNSF consult with a qualified biologist regarding potential impacts from salvaging activities to federally listed threatened and endangered species on the rail right-of-way (project area), report the findings to the Board's Office of Environmental Analysis (OEA), and abide by appropriate mitigation measures resulting from consultations between OEA and the U.S. Fish and Wildlife Service before engaging in salvage activities or filing its consummation notice. In response to this condition, BNSF has submitted new information stating that biologists conducted a biological survey within the project area, observed no special status species, and determined that the project area has very little potential to serve as habitat that would support special status species. It was noted, however, that, adjacent to the rail right-of-way, there is a strip of coastal sage scrub, a type of habitat with moderate potential to support the federally threatened California gnatcatcher. If this strip of coastal sage scrub is found to be occupied by the California gnatcatcher, then salvage of the rail line could result in indirect effects to the species. In

¹ By notice served on November 7, 2011, the Board explained that it had mistakenly referenced milepost 119.35 as milepost 119.53 in the September 16 decision and in another decision served in this proceeding on October 6, 2011.

² In the October 6 decision, the Board reopened the proceeding and removed a Section 106 historic preservation condition imposed in the September 16 decision.

addition, the biological survey found that any removal of vegetation (including non-native vegetation) during the migratory bird and/or raptor season could result in impacts to active nests in and within 500 feet of the right-of-way.

Based on the information submitted by BNSF, OEA has developed a supplemental final environmental assessment. This assessment, which was issued on November 9, 2011, recommends the removal of condition no. 4 and recommends the imposition of the following two new conditions requiring BNSF to: (1) ensure that salvage activities in the vicinity of coastal sage scrub be avoided during the California gnatcatcher's breeding season (February 15 – August 30); and (2) ensure that any vegetation clearing that occurs as part of salvage activities shall be conducted during the non-breeding season (September 1 through February 14), and if vegetation clearing is required during salvage activities, ensure that a qualified biologist conducts a nesting bird survey prior to any salvage activities and in the event an active nest is found within or adjacent to the right-of-way, then a 500-foot buffer zone be established and no clearing be allowed within the buffer zone until the biologist determines that the nest is no longer active.

Accordingly, the proceeding will be reopened and the previously imposed condition no. 4 will be removed as recommended by OEA, and the two new conditions recommended by OEA will be imposed.³

As conditioned, this decision 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, condition no. 4 imposed in the September 16, 2011 decision is removed and the following two new environmental conditions are added requiring BNSF to: (1) ensure that salvage activities in the vicinity of coastal sage scrub are avoided during the California gnatcatcher's breeding season (February 15 – August 30) to avoid potential indirect impacts to the federally threatened California gnatcatcher; and (2) ensure that any vegetation clearing that occurs as part of salvage activities shall be conducted during the non-breeding season (September 1 through February 14) to avoid impacts to migratory birds and raptors, and if vegetation clearing is required during salvage activities, ensure that a qualified biologist conducts a nesting bird survey prior to any salvage activities and in the event an active nest is found within or adjacent to the right-of-way, then a 500-foot buffer zone be established and no

³ The other environmental conditions recommended in the September 16 decision remain in effect.

clearing be allowed within the buffer zone until the biologist determines that the nest is no longer active.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.