

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 453X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KING COUNTY, WA

Decided: December 7, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 0.65 miles of rail line, extending between milepost 10.60 and milepost 11.25, near Wilburton, in King County, WA. Notice of the exemption was served and published in the Federal Register on November 8, 2006 (71 FR 65567-68). The exemption is scheduled to become effective on December 8, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 13, 2006. In the EA, SEA notes that the Washington State Department of Ecology Northwest Regional Office (WDOE) commented that a National Pollutant Discharge Elimination System (NPDES) permit is required for all soil disturbing activities of one or more acres of land.¹ According to SEA, WDOE indicated that BNSF did not provide enough information on the acreages of impact and that it would need more detailed information to make an appropriate determination. To address this issue, SEA recommends a condition requiring BNSF to consult with WDOE, prior to the commencement of salvage activities, to ensure that the provisions of the NPDES program have been fulfilled, and to comply with the reasonable NPDES requirements.

SEA also states in the EA that the U.S. Fish and Wildlife Service (USFWS) recommended that BNSF, after obtaining a species list from its website and contacting the Washington State Department of Fish and Wildlife's (WDFW) Priority Habitat and Species Program and the Washington Department of Natural Resources for listed species occurrences, coordinate with it concerning adverse impacts on Federal and state listed endangered or threatened species. Additionally, SEA states that WDFW indicated that the salvage or demolition from the proposed abandonment could disturb the Bald eagle and other bird species during the breeding season. Thus, SEA recommends that BNSF consult with USFWS and WDFW prior to commencement of salvage activities to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS and WDFW consultations to SEA in writing prior to the onset of salvage operations.

¹ The U.S. Environmental Protection Agency indicates that, in Washington State, the NPDES program is administered through WDOE.

In the EA, SEA states that WDFW also indicated that sediment from salvage or demolition activities from the proposed abandonment may impact water quality for the Chinook salmon. According to SEA, WDFW recommended that BNSF contact the National Marine Fisheries Service (NMFS) to determine the appropriate mitigation measures for the Chinook salmon. Thus, SEA recommends that BNSF consult with NMFS prior to commencement of salvage activities to determine if the proposed abandonment would have any adverse impacts on the Chinook salmon and its habitat, and report the results of the consultation to SEA in writing.

SEA indicates in the EA that BNSF contacted the U.S. Army Corps of Engineers (Corps) to determine whether the proposed abandonment would require a permit under section 404 of the Clean Water Act or otherwise would impact wetlands and waters of the United States. According to SEA, BNSF states that the Corps indicated that it had no specific information on designated wetlands within the area. SEA recommends that BNSF consult with the Corps and obtain written confirmation from the Corps regarding permit requirements for bridge salvage and demolition work and, if applicable, comply with the Corps' reasonable requirements.

Additionally, in the EA, SEA states that BNSF did not indicate whether it has contacted WDOE to determine if the proposed abandonment would be subject to the consistency requirements of the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* (CZMA). The area of the proposed abandonment drains into Lake Washington and eventually the coastal waters of the Puget Sound. Therefore, SEA recommends a condition requiring BNSF to consult with WDOE prior to commencement of salvage activities to determine whether state coastal management consistency certification is required. If consistency certification is required, SEA recommends that BNSF be prohibited from performing any salvage activities until it obtains the certification, and that BNSF be required to notify SEA, pursuant to the CZMA and the Board's environmental regulations at 49 CFR 1105.9.

Finally, SEA states that the Washington State Department of Archaeology and Historic Preservation (State Historic Preservation Office or SHPO), citing the lack of comprehensive information, requested more information from BNSF on the railroad infrastructure, such as the bridge and undercrossing, and stated that its cultural resource reporting guidelines should be followed. Because the SHPO has not completed its evaluation of the potential impact of the proposed abandonment on historic resources, SEA recommends that BNSF be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f), and report to SEA the results of any consultations with the SHPO.

Comments to the EA were due on November 29, 2006. SEA received no additional comments. Accordingly, the conditions recommended by SEA in the EA will be imposed. Based on SEA's recommendations, 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 exemption of the abandonment of the rail line described above covered by the notice served and published in the Federal Register on November 8, 2006, is subject to the conditions that, prior to the commencement of any salvage activities, BNSF shall: (1) consult with WDOE to ensure appropriate consideration of the NPDES requirements and comply with the reasonable NPDES requirements; (2) consult with USFWS and WDFW to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS and WDFW consultations to SEA in writing; (3) consult with NMFS to assess potential impacts to the Chinook salmon and its habitat, and report the results of the NMFS consultations to SEA in writing; (4) consult with the Corps regarding its requirements and, if applicable, comply with the Corps' reasonable requirements; and (5) consult with WDOE to determine whether state coastal management consistency certification is required and, if so, be prohibited from performing any salvage activities until it obtains the certification and be required to notify SEA, pursuant to the CZMA and the Board's environmental regulations at 49 CFR 1105.9. Also, the exemption is subject to the condition that (6) BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings and structures within the proposed abandonment's right-of-way that are eligible for listing or are listed in the National Register until the section 106 process has been completed, and shall report to SEA the results of any consultation with the SHPO.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary