

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 448X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
THURSTON COUNTY, WA

Decided: April 16, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.86-mile line of railroad that extends between Engineering Station 476+09 and Engineering Station 521+42 near Olympia, in Thurston County, WA. Notice of the exemption was served and published in the Federal Register on March 16, 2007 (72 FR 12673-74). The exemption is scheduled to become effective on April 17, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 23, 2007. In the EA, SEA noted that the United States Environmental Protection Agency (USEPA) had submitted comments to BNSF stating that the proposed abandonment parallels Capitol Lake, a navigable waterway that likely contains wetlands that would be subject to permitting requirements under section 402 of the Clean Water Act (CWA). USEPA commented that CWA requirements may apply should the proposed abandonment include railroad salvage activities such as the removal of tracks and ties for any purpose. In particular, USEPA commented that, in the event proposed salvage activities involve clearing, grading or excavating that will disturb more than one acre of land, BNSF would be required to obtain a permit under the CWA National Pollution Discharge Elimination System (NPDES) to prevent or minimize the discharge of pollutants into jurisdictional waters of the United States. Accordingly, SEA has recommended that a condition be imposed requiring that BNSF consult with USEPA prior to salvage operations in order to ensure that any reasonable requirements under the CWA are met.¹

SEA also stated that USEPA had recommended that BNSF be required to consult with the Washington Department of Ecology, Washington State Water Quality Program (WDOE), which has permitting authority for the NPDES program in Washington State. Deborah Coronett (360-528-8000) of WDOE confirmed to BNSF via telephone that an NPDES permit would be required if the salvage area, including any staging areas, exceeds one acre of land. Ms. Coronett further indicated to BNSF that, if the salvage area is less than one acre, water quality protection

¹ This condition was included in the text of the EA served on March 23; however, it was inadvertently omitted from the recommended conditions section of the EA.

steps should still be taken. To address the concerns raised by USEPA, SEA has recommended that BNSF consult with WDOE prior to initiating salvage operations on the line.

SEA further stated that BNSF had contacted WDOE to request information about any 100-year floodplains that may be affected by the proposed abandonment. WDOE's response indicated that the proposed abandonment location includes two areas that cross 100-year floodplains, both near small bridge crossings just north of the Fourth Avenue Bridge in downtown Olympia. According to Kevin Farrell (360-407-7253) of WDOE, these areas may be subject to regulation under the National Flood Insurance Program (NFIP). Therefore, SEA has recommended that a condition be imposed requiring BNSF to consult with WDOE prior to conducting salvage operations on the line to ensure that BNSF comply with the reasonable requirements of NFIP.

SEA indicated that the United States Fish and Wildlife Service (USFWS) had provided comments by phone to BNSF stating that, due to staffing shortages, no written comments would be provided regarding the proposed abandonment at this time. The USFWS suggested that BNSF review the Washington State Fish and Wildlife database to determine the possibility that the area of the proposed abandonment could have potential effects to Federally listed threatened or endangered species or critical habitats. A copy of the resulting database printout was included in the environmental report provided by BNSF; however, the extensive list did not specify if the proposed abandonment would have adverse impacts to Federally listed threatened or endangered species under USFWS jurisdiction and currently protected by the Endangered Species Act. Therefore, SEA has recommended that BNSF be required to consult further with the USFWS prior to the onset of salvage activities to more conclusively determine any potential impacts of the proposed abandonment on any Federally listed threatened or endangered species.

Finally, SEA stated that the Washington Department of Archaeology and Historic Preservation (SHPO) had submitted comments in response to the historic report stating that the information provided by BNSF regarding historic properties along the line is insufficient. The SHPO further noted that the project area has the potential for archaeological and historical resources. The SHPO thus recommended that a professional cultural resources survey be completed for the project area to identify any archaeological resources. Accordingly, SEA has recommended that BNSF be required to retain its 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) eligible for listing or listed in the National Register of Historic Places (National Register) until completion of the section 106 process.

No comments to the EA were received by the April 9, 2006 due date. Accordingly, the conditions recommended by SEA 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 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 is subject to the conditions that BNSF shall: (1) consult with USEPA prior to the commencement of salvage operations in order to ensure that any requirements under the CWA are met; (2) prior to the commencement of any salvage activities, consult with WDOE (Deborah Coronett at 360-528-8000) to ensure appropriate consideration of NPDES requirements; (3) prior to conducting salvage activities, consult with WDOE (Kevin Farrell at 360-407-7253) to ensure that BNSF complies with the reasonable requirements of NFIP; (4) prior to the onset of salvage activities, consult with USFWS to ensure that no Federally listed threatened or endangered species currently protected by the Endangered Species Act are adversely impacted by the proposed abandonment; and (5) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register (generally, 50 years old or older) until the section 106 process of the National Historic Preservation Act has been completed, report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and not file its consummation notice or initiate any salvage activities related to abandonment 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, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary