

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 420X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION—IN MERCER COUNTY, ND

Decided: July 2, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 3.36-mile line of railroad between milepost 77.14 near Antelope Valley Station and milepost 80.50 near Zap, in Mercer County, ND. Notice of the exemption was served and published in the Federal Register on June 4, 2004 (69 FR 31656). The exemption is scheduled to become effective on July 6, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 10, 2004. In the EA, SEA states that the North Dakota Park and Recreation Department recommends that any area impacted by salvage activities be revegetated with species native to the project area. Therefore, SEA recommends that BNSF be required to revegetate areas impacted by salvage activities with species native to the area.

SEA also notes that the North Dakota Department of Health, Environmental Health Section (NDDH), states that, even, though a North Dakota Pollution Discharge Elimination System permit would not be required, NDDH recommends that BNSF follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body. Accordingly, SEA recommends that, during salvage activities, BNSF follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body.

Finally, SEA states that the Mercer County Office of Emergency Services states that the proposed abandonment would not adversely affect any 100-year floodplains in the area, provided that: (1) the roadbed along with drainage culverts and structures are left in place; and (2) if the wood timber bridge spanning Spring Creek within the City of Zap (City) is removed, components are removed to the ground level above the water line and to the stream bed below the water line. No bridge components should be left in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream. BNSF states that it plans to leave the roadbed, along with the drainage culverts and structures, in place, and if the wood timber bridge within the City were to be removed, all components would be removed. Accordingly, to ensure that salvage activities associated with the proposed abandonment do not impact safety by

affecting any 100-year floodplains, SEA recommends that BNSF be required to conduct salvage activities in the following manner: (1) leave the roadbed along with drainage culverts and structures in place; and (2) if the wood timber bridge spanning Spring Creek within the City is removed, components are removed to ground level above the water line and to the stream bed below the waterline. No bridge components shall be left in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream.

In the EA, SEA initially recommended that BNSF 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 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Following the receipt of additional comments from BNSF and the State Historical Society of North Dakota (SHPO), SEA has determined that the previously recommended historic condition is no longer necessary. However, the SHPO still requests submission of site forms for the bridges and any historical sites and the final cultural resources report.¹ SEA now recommends the imposition of a condition requiring that, prior to salvage activities, BNSF be required to submit site forms for the bridges and any historical sites and the final cultural resources report to the SHPO.

Comments to the EA were due by June 28, 2004. Based on comments to the EA, SEA states that the National Geodetic Survey (NGS) has identified four geodetic station markers that may be affected by the proposed abandonment and has requested that it receive at least 90 days' notification in advance of any activities that will disturb or destroy the markers. Therefore, SEA recommends that BNSF provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

Based on SEA's recommendations, the recommended environmental conditions will be imposed.

On June 1, 2004, the City filed a request for issuance of a notice of interim trail use (NITU) for the subject line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to negotiate with BNSF for acquisition of the right-of-way for use as a trail. The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29 and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR

¹ In the EA, SEA initially stated that the SHPO had requested that a Class I Cultural Resources Inventory of the Area of Potential Effect be prepared and submitted to its office for consultation and recommended that the two bridges over 50 years of age along the line be recorded and preliminarily evaluated by a state-permitted cultural resource firm.

1152.29. By letter filed on June 3, 2004, BNSF indicated its willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration of railroad purposes.

As conditioned, this action 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 June 4, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the July 6, 2004 effective date of the exemption (until January 2, 2005), and subject to the conditions that BNSF: (1) during salvage activities, shall revegetate areas impacted by salvage activities with species native to the areas; (2) during salvage activities, shall follow Best Management Practices to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (3) shall ensure that salvage activities associated with the proposed abandonment do not impact safety by affecting any 100-year floodplains during salvage activities and shall (a) leave the roadbed along with drainage culverts and structures in place, and (b) if the wood timber bridge spanning Spring Creek within the City is removed, (i) remove components to ground level above the water line and to the stream bed below the water line, and (ii) leave bridge components in place that may catch ice or debris, or that may in any manner restrict the natural flow of the stream; (4) prior to beginning salvage activities, shall submit site forms for the bridges and any historical sites and the final cultural resources report to the SHPO; and (5) shall provide NGS with 90 days' notice prior to disturbing or destroying any identified geodetic station markers, and shall consult with NGS to plan for their relocation.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by January 2, 2005, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary