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SERVICE DATE - OCTOBER 26, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 425X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION—IN CHASE, MORRIS, MARION AND
DICKINSON COUNTIES, KS

Decided: October 25, 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 a 25.57-mile line of railroad between BNSF milepost 0.00 near Neva and milepost 25.45 near Lost Springs, in Chase, Morris, Marion and Dickinson Counties, KS. Notice of the exemption was served and published in the Federal Register on September 29, 2004 (69 FR 58226-27). The exemption is scheduled to become effective on October 29, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 4, 2004. In the EA, SEA recommends that certain conditions be imposed on any decision granting abandonment authority. First, SEA notes that the U.S. Fish and Wildlife Service (USFWS) indicates that the rail line crosses three streams in which the federally listed endangered Topeka shiner (*Notropis topeka*) has been found. USFWS states that the streams, all located on the segment between Neva and Hymer, include Gannon Creek, Mulvane Creek, and Schaffer Creek, in Chase County. USFWS states that, as long as abandonment or salvage activities would not affect the streams or stabilizing riparian vegetation in any way, there should be no adverse impact to this listed species. However, USFWS advises that, if BNSF determines that abandonment or salvage activities may in some way impact the streams, BNSF should contact USFWS for a determination of the need for formal consultation pursuant to section 7 of the Endangered Species Act. In such an event, SEA recommends a condition requiring BNSF to contact USFWS for a determination of the need for formal consultation pursuant to section 7 of the Endangered Species Act.

SEA also notes the Kansas Department of Wildlife and Parks' (KDWP) statement that, if salvage activities result in any modification to waterways, it should again be notified of such activities so that it can determine if the activities warrant an Action Permit from the agency. KDWP also states that BNSF should implement standard erosion control Best Management Practices, temporary weed-free seeding/mulching to protect water quality during demolition, and the use of native grasses and forbs to permanently revegetate any areas disturbed by salvage activity. Therefore, SEA recommends that, if any modification of streams along the right-of-way is necessary: (a) KDWP should again be notified of such activities so that it can be determined if the activities warrant an Action Permit from KDWP, and (b) BNSF should be

required to implement standard erosion control Best Management Practices, temporary weed-free seeding/mulching, and the use of native grasses and forbs.

SEA further notes BNSF's statement that no work is proposed within any jurisdictional waters, including wetlands, that proposed salvage activities would not involve the discharge of dredged or fill material in waters of the United States and, that an Army Corps of Engineers permit would not be required. BNSF states that Chase and Marion Counties have advised that a portion of the rail line passes through several areas of the 100-year floodplain. BNSF states that it does not believe that the proposed exemption would affect any designated wetlands or 100-year floodplains as the segment of line proposed for abandonment is not located in a designated floodplain. To ensure that the 100-year floodplain is not adversely affected, SEA recommends that BNSF again consult with Chase and Marion Counties regarding the location of the floodplain and potential impacts to the floodplain prior to any salvage activities.

Lastly, SEA indicates that the National Geodetic Survey (NGS) has identified 24 geodetic station markers that may be affected by the proposed abandonment (JF-0290, JF-0240-0247, JF-0385-0398 and JF-0400). NGS states that, if there are any planned activities which would disturb or destroy these markers, NGS requires not less than 90 days' notification in advance of such activities to plan for their relocation. Therefore, SEA recommends that, in such an event, BNSF contact NGS not less than 90 days in advance of such activities to plan for relocating the markers.

Comments to the EA were due by October 19, 2004. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

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, the exemption of the abandonment of the line described above is subject to the following conditions: (1) if BNSF determines that abandonment or salvage activities may in some way impact three streams crossed by the rail line, BNSF shall contact USFWS for a determination of the need for formal consultation pursuant to section 7 of the Endangered Species Act; (2) if any modification to streams along the right-of-way is necessary, KDWP should again be notified of such activities so that it can be determined if the activities warrant an Action Permit from the agency; (3) if such a modification occurs, BNSF shall implement standard erosion control Best Management Practices, temporary weed-free

seeding/mulching to protect water quality during demolition, and the use of native grasses and forbs to permanently revegetate any areas disturbed by salvage activity; (4) if there are any planned activities that would disturb or destroy any of the 24 geodetic station markers identified by NGS, BNSF shall contact NGS not less than 90 days in advance of such activities to plan for their relocation; and (5) to ensure that the 100-year floodplain is not adversely affected, BNSF shall consult with Chase and Marion Counties regarding the location of the floodplain and potential impacts to the floodplain prior to any salvage activities.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary