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SERVICE DATE - LATE RELEASE JANUARY 28, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 390X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY—
ABANDONMENT EXEMPTION—BETWEEN LOVING AND PECOS JUNCTION, NM,
AND BETWEEN PECOS JUNCTION, NM, AND RUSTLER SPRINGS, TX

Decided: January 28, 2002

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad between BNSF milepost 196.00 near Loving, NM, and milepost 217.20 near Pecos Junction, NM, and between milepost 0.00 near Pecos Junction, NM, and milepost 25.34 near Rustler Springs, TX, a total distance of 46.54 miles. Notice of the exemption was served and published in the Federal Register on December 28, 2001 (66 FR 67363-64). The exemption is scheduled to become effective on January 29, 2002.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 3, 2002. In the EA, SEA indicates that the United States Department of Agriculture, Natural Resources Conservation Service, and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office, have requested that the bridge located in T.26S., R.29E., Section 19: NE 1/4 NW 1/4 be left intact due to the nesting and roosting activities of cliff swallows and various species of bats occurring on that bridge. SEA therefore recommends that, prior to conducting any salvage operations, BNSF consult with these agencies concerning the subject bridge.

SEA indicates that the United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office, is concerned that the proposed action may affect threatened, endangered, proposed species, critical habitat, candidates, or species of concern. SEA therefore recommends that, prior to conducting any salvage operations, BNSF consult with the agency concerning possible impacts to threatened or endangered plant or wildlife species or habitats and birds protected under the Migratory Bird Treaty Act.

SEA advises the Board that the State of New Mexico Environment Department is concerned that the project may require National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit coverage. This permit would require that a Storm Water Pollution Prevention Plan be prepared for the site and that appropriate Best Management Practices be installed and maintained both during and after construction to prevent pollutants in storm water runoff from entering waters of the United States. SEA therefore recommends that, prior to conducting any salvage operations, BNSF consult with the agency

concerning possible impacts to waters of the United States from storm water discharge and whether NPDES permit coverage is appropriate.

SEA states that the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office, is concerned that grazing allotment boundary or pasture fences, several of which run parallel to or tie into the railroad right-of-way, may be damaged during salvage operations. SEA therefore recommends that, prior to conducting any salvage operations, BNSF consult with the agency concerning possible damage to grazing allotment boundary or pasture fences.

Finally, SEA indicates that the State of New Mexico Office of Cultural Affairs, Historic Preservation Division, is concerned that track removal may adversely affect archeological resources in the vicinity of the proposed project. Pending resolution of this issue, SEA recommends that BNSF retain its interest in and take no steps to alter the historic integrity of all sites or structures on the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

No comments to the EA were filed. Accordingly, the conditions recommended by SEA in the EA will be imposed. We conclude that 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 is subject to the conditions that BNSF: (a) prior to conducting any salvage operations, (1) consult with the United States Department of Agriculture, Natural Resources Conservation Service, and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office, concerning the bridge located in T.26S., R.29E., Section 19: NE 1/4 NW 1/4; (2) consult with the United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office, concerning possible impacts to threatened or endangered plant or wildlife species or habitats and birds protected under the Migratory Bird Treaty Act; (3) consult with the State of New Mexico Environment Department concerning possible impacts to waters of the United States from storm water discharge and whether NPDES permit coverage is appropriate; and (4) consult with the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office, concerning possible damage to grazing allotment boundary or pasture fences; and (b) retain its interest in and take no steps to alter the historic integrity of all sites or structures on the right-of-way until completion of the section 106 process of the NHPA.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary