

EI-1448
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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

March 29, 2005

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RECEIVED

Vernon A. Williams
Surface Transportation Board
Washington, D.C. 20423-0001

**RE: Control Number 6-5-I-112, BNSF Railway Company – Abandonment
Exemption, Hamilton and Merrick Counties (STB Docket No. AB-6 [Sub-No.
408X])**

Dear Mr. Williams:

This responds to your March 7, 2005, letter requesting comments from the U.S. Fish and Wildlife Service (Service) on the Surface Transportation Board's (STB) decision Burlington Northern and Santa Fe Company (BNSF) Railway Company – Abandonment Exemption in Hamilton and Merrick County, Nebraska. These comments are provided as technical assistance and predevelopment consultation and do not constitute a Service report under authority of the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*) on any required Federal environmental review or permit.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the Federal statutes with which our office deals are the FWCA, Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act (NEPA)(83 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). The FWCA requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of Federal and federally funded, permitted, or licensed water resource developments. Section 7 of ESA outlines procedures for interagency consultations on the effects of Federal actions on federally listed threatened and endangered species and their designated critical habitats. The Service participates in scoping and review of actions significantly affecting the quality of the environment under authority of the NEPA. In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote conservation of fish and wildlife resources for the benefit of the public.

In Nebraska, the Service has special concerns for migratory birds, endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas

and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, or stream alteration, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

We have reviewed the plans for the proposed project and offer the following comments:

- a. The proposed project does not appear to impact federal fish and wildlife management facilities.
- b. We concur that, based on the project description provided, the proposed project will not adversely affect federally listed threatened and endangered species, or their designated critical habitat. **However if trail development should necessitate any modifications to the bridge spanning the Platte River, we recommend that you reinitiate section 7 consultation with this office.**
- c. If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Army Corps of Engineers may be needed. The Service recommends that impacts to wetlands and streams be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 1.5:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that the pattern, profile, and dimension be replaced on a 1:1 basis. Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaced for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.
- d. Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 as amended) construction activities in grassland, wetland, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of the MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 5, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the

project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. It is further recommended that the results of field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) for potential review by the Service (if requested) until such time as construction on the proposed project has been completed. The Service's Nebraska Field Office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests which cannot be avoided by the planned construction activities. Adherence to these guidelines will help to avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

Based upon the submitted information, we have no objection to the proposal as currently planned. However, should the plans be modified, we recommend that you reinitiate coordination with this office.

Should you have any further questions, please contact Mr. Jeff Runge within our office at (308)382-6468, extension 22. Thank you for the opportunity to offer comments.

Sincerely,



John Cochran
Acting Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Troy Rahmig)