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DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

June 6, 2005

Operations Division
Regulatory Branch

*received
6/13/05*

AB-6 (SUB-NO. 428X)

Mr. Michael A. Smith
Freeborn and Peters, LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Smith:

This comment replies to your May 10, 2005, letter regarding the proposed Burlington Northern and Santa Fe Railway Company's line abandonment between French and York Canyon, New Mexico, Docket No. AB-6 (Sub-No. 428X) in the Vermejo River and other waters near Cimarron, Colfax County, New Mexico. We received your letter on May 26, 2005, from Galveston District. Previous correspondence on this activity appears to have been sent to our old address and was never received. We have assigned Action No. 2005 00320 to this activity.

We have reviewed the Environmental Report for Docket No. AB-6, especially paragraph (9)(ii) and Exhibit I. The proposed abandonment project is located in several waterways between French (MP 0.00) and York Canyon (MP 36.90), including 9 structures listed in Exhibit K (no map provided showing milepost locations). The waterway crossing removal activities, including any bank and channel reshaping or stabilization, may include discharges of dredged and fill material into jurisdictional waters of the United States, including wetlands. We would like to provide comments on the proposed project relating to Section 404 of the Clean Water Act.

Exhibit I states that the railroad abandonment may require removal of the track materials with the roadbed left intact. No specific description of the project construction methods was provided. In a telephone conversation with Mr. Brian Nettles on May 25, I understand that the project will also include removal of bridges and culverted crossings. Removal of culverts and their surrounding earth may require re-shaping of the stream bed and banks, including a discharge of dredged and fill material into waters of the United States.

Stream bed and bank re-shaping activities are regulated under the provisions of Section 404 of the Clean Water Act, unless

specifically exempt. A Department of the Army Permit will be required for the project unless the activities are exempt or there will be no discharge of dredged or fill material into waters of the United States. Additional information will be required to make a specific determination. If a Section 404 permit is required, Section 401 water quality certification will also be required from the appropriate water quality authority.

The Burlington Northern Santa Fe Railway Company should submit a permit application as soon as possible to insure that construction plans are not delayed by the permit processing. The application form and information about the regulatory program may be found on our web page at www.spa.usace.army.mil/reg/. If the project is located on private or public lands, please use the Joint Application Form between the U.S. Army Corps of Engineers and the New Mexico Environment Department.

If you or the Burlington Northern Santa Fe Railway Company have any questions regarding this determination, please feel free to contact me at (505) 342-3216 or by e-mail at jean.e.manger@usace.army.mil.

Sincerely,



Jean E. Manger
Regulatory Project Manager

Copies Furnished:

✓ Surface Transportation Board
Section of Environmental Analysis
1925 K Street, NW, Room 504
Washington, DC 20423-0001

Mr. Rich Batie
BNSF Railway Co.
2500 Loumenk Dr
Ft. Worth, TX 76131-2828