

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 6 (Sub-No. 485X)

June 13, 2013

RECOMMENDATION: Remove Section 106 Condition and Add New Conditions

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption with the Surface Transportation Board (the Board) to abandon a 5.11 mile line of railroad in McKinley County, New Mexico (the Line). The Line is located on private, public, and tribal lands, including portions of the Navajo Nation. The proposed abandonment would entail the salvage of rail and ties along the Line, as well as the removal of one bridge, located at Milepost 16.10. The Board's Office of Environmental Analysis (OEA) issued an Environmental Assessment (EA) on September 24, 2012 concluding that the proposed abandonment would not result in significant adverse environmental impacts.

In the EA, OEA recommended two environmental conditions, which were subsequently imposed in the Board's October 18, 2012 decision. The first condition requires BNSF to consult with the Navajo Nation Natural Heritage Program regarding potential impacts of salvage activities on federally listed threatened and endangered species that may occur in the vicinity of the Line. The condition also requires BNSF to report back to OEA the results of these consultations prior to conducting any salvage activities.

Because the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), had not been completed at the time of the EA and the Board's decision, a second condition was imposed requiring BNSF to: (a) retain its interest in, and take no steps to alter, the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the Section 106 process of the NHPA has been completed; (b) report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the New Mexico Historic Preservation Division of the Department of Cultural Affairs (the State Historic Preservation Office or SHPO), the Navajo Nation Historic Preservation Department (Tribal Historic Preservation Office or THPO), and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment

(including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

New Comments on the Abandonment

Section 106 Condition

On April 18, 2013, OEA received a letter from the SHPO stating that the proposed abandonment would not adversely affect any properties listed in or eligible for listing in the National Register. On May 8, 2013, OEA received a letter from the THPO stating that the area in which the Line is located is not of archaeological interest and recommending that authority for the proposed abandonment be granted.

OEA has reviewed the available information and concurs with the comments of the SHPO and the THPO. Accordingly, pursuant to the Section 106 regulations of NHPA and following consultation with the SHPO, the THPO, and the public, we have determined that the proposed abandonment would not adversely affect historic properties listed in or eligible for inclusion in the National Register or any resources of cultural or archaeological interest to the Navajo Nation. The documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of the railroad's Historic Report, all relevant correspondence, and the September 24, 2012 EA, which have been provided to the SHPO and THPO, and made available to the public on the Board's website at <http://www.stb.dot.gov>. We therefore recommend that the Section 106 condition in this proceeding be removed.

New Condition To Address Unanticipated Discoveries Of Archaeological Resources

In its May 8, 2013 letter, the THPO states that, should any previously unidentified or incorrectly identified cultural resources be discovered during abandonment activities, operations should cease and BNSF should immediately notify the THPO. In response to the THPO's concerns regarding unanticipated discoveries of archaeological resources, OEA is recommending that the Board impose the following new condition:

In the event that any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, and locations reportedly associated with Native American religious/traditional beliefs or practices, are discovered during salvage activities, BNSF Railway Company (BNSF) shall immediately cease all work and notify the Board's Office of Environmental Analysis (OEA), the Navajo Nation Historic Preservation Department (Tribal Historic Preservation Office or THPO), and the New Mexico Historic Preservation Division of the Department of Cultural Affairs (the State Historic Preservation Office or SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the THPO, the SHPO, BNSF, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Additional Comments

In addition to the Section 106 Condition mentioned above, the Board also imposed a condition in its October 18, 2013 decision requiring BNSF to consult with the Navajo Nation Natural Heritage Program regarding the potential impacts of the proposed abandonment on federally listed threatened and endangered species. OEA has received comments from the Department of Fish and Wildlife (NNDFW) of the Navajo Nation Natural Heritage Program stating that the proposed abandonment would have no effect on federally listed or tribally listed species of concern, including threatened and endangered species.

Having reviewed the available information, OEA concurs with NNDFW's finding of no significant impact to threatened or endangered species. The consultation condition described above is a self-executing condition that does not require formal action on the part of the Board in order to be removed. OEA considers the documentation submitted by BNSF of its consultation with NNDFW to be sufficient to meet the requirements of this condition.

New Condition To Address Tribal Concerns Regarding Protected Species

In its comments, NNDFW states that any salvage activity associated with the proposed abandonment should meet certain conditions for the protection of threatened and endangered species. In particular, NNDFW states that if the dismantling of the bridge located at Milepost 16.10 should take place during the migratory bird breeding season of March 15 through August 15, then BNSF should conduct a pre-action survey of the site. If an active nest should be discovered on the bridge structure, NNDFW states that BNSF should obtain a nest take permit from the U.S. Fish and Wildlife Service for the removal of eggs, nests, and nesting birds. According to NNDFW, any eggs or nesting birds removed from the site should be removed by a federally permitted migratory bird rehabilitator to be raised artificially in a federally permitted migratory bird rehabilitation facility. Therefore, OEA is recommending that the Board impose the following new condition:

If the bridge located at Milepost 16.10 should be scheduled to be dismantled between March 15 and August 15, BNSF Railway Company (BNSF) shall, in consultation with Navajo Nation Department of Fish and Wildlife (NNDFW), conduct a pre-action survey of the affected area prior to undertaking the dismantling of the bridge. If an active nest is discovered on the bridge structure, BNSF shall notify NNDFW and the U.S. Fish and Wildlife Service and shall comply with those agencies' reasonable requirements for the removal of any nests, eggs, or nesting birds.

Conclusions

For the reasons stated above, OEA recommends that the Board: (1) remove the Section 106 condition that was imposed in the October 18, 2012 decision, (2) impose a

new condition to address the THPO's concerns regarding unanticipated discoveries of archaeological resources, and (3) impose a new condition to address NNDFW's concerns regarding the protected species. Condition 1, which requires consultation with the Navajo Nation Natural Heritage Program, is a self-executing condition that does not require formal action. Accordingly, the three combined conditions are as follows:

1. Prior to commencement of any salvage activities, BNSF Railway Company shall consult with the Navajo Nation Natural Heritage Program regarding potential impacts from salvaging activities to federally listed threatened and endangered species that may occur in the vicinity of the Line. The railroad shall report the results of these consultations in writing to the Board's Office of Environmental Analysis prior to the onset of salvage operations.
2. If the bridge located at Milepost 16.10 should be scheduled to be dismantled between March 15 and August 15, BNSF Railway Company (BNSF) shall, in consultation with Navajo Nation Department of Fish and Wildlife (NNDFW), conduct a pre-action survey of the affected area prior to undertaking the dismantling of the bridge. If an active nest is discovered on the bridge structure, BNSF shall notify NNDFW and the U.S. Fish and Wildlife Service and shall comply with those agencies' reasonable requirements for the removal of any nests, eggs, or nesting birds.
3. In the event that any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, and locations reportedly associated with Native American religious/traditional beliefs or practices, are discovered during salvage activities, BNSF Railway Company (BNSF) shall immediately cease all work and notify the Board's Office of Environmental Analysis (OEA), the Navajo Nation Historic Preservation Department (Tribal Historic Preservation Office or THPO), and the New Mexico Historic Preservation Division of the Department of Cultural Affairs (the State Historic Preservation Office or SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the THPO, the SHPO, BNSF, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

If the above conditions are imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

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