

#E0-2799



**Re: Fw: RE: BNSF Railway Abandonment, Section 7 Consultation Code
01EWF00-2016-SLI-0092**

Diana Wood to: Karl Morell

05/31/2016 01:44 PM

Bcc: Diana Wood

Karl:

I just spoke with Shirley Burgdorf and she would like to know if the bridges will be removed, and if so, for you to explain the process here, as Oregon spotted frog habitat would likely be affected. Also, she would like for you to explain the limit of disturbance, as the low lying portions of the right-of-way along the drainage conveyances contain Oregon spotted frog habitat. Shirley said that, depending upon your response, this process could result in a "no adverse effect" finding; require temporal restrictions; or result in formal Section 7 consultation.

I mentioned to Shirley that Thurston County has submitted a public use and a trail use request, and that if either process moves forward, the abandonment, including conditions, will be held in abeyance.

Thanks!

Diana

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
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Diana Wood

Shirley: BNSF has provided the response belo...

05/27/2016 06:15:50 AM

From: Diana Wood/STB
To: shirley_burgdorf@fws.gov
Cc: "Karl Morell" <karlm@karlmorell.com>
Date: 05/27/2016 06:15 AM
Subject: Fw: RE: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Shirley:

BNSF has provided the response below to your questions regarding the salvage procedure. Based on this description, we believe that the effect would be minimal. Please let me know if you concur with a no adverse effect finding, or whether temporal restrictions need to be implemented for protection of Oregon spotted frog habitat.

Regards,

Diana

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-----Forwarded by Diana Wood/STB on 05/27/2016 06:02AM -----

To: "Diana.Wood@stb.dot.gov" <Diana.Wood@stb.dot.gov>

From: Karl Morell <karlm@karlmorell.com>

Date: 05/26/2016 05:06PM

Subject: RE: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Diana, the following responds to the questions from F&WS:

1. The salvage company selected by BNSF will be required to use specialized (heavy) equipment to remove the tracks and ties. But that equipment will be brought to the site along BNSF's right-of-way and will not disturb any vegetation adjacent to the right-of-way.
2. Vegetation removal adjacent to the right-of-way should not be required to gain access to the site. It appears, however, that there is some vegetation within the tracks and ties that will need to be disturbed in order to remove the tracks and ties. The amount of such disturbance will not be precisely known until a salvage company has been selected.
3. The track will be reused, rerolled or sold as scrap depending on the quality of the rail. The good quality ties will be re-used by BNSF, landscape quality ties will be sold to lumber dealers for landscaping and scrap ties will be shipped by BNSF to a nearby EPA-approved disposal site.
4. It is unlikely that erosion control BMPs will be necessary but BNSF would be willing to require the salvage company to use such controls if necessary.

The July 29, 2015 letter from BNSF to F&WS addresses these questions.

From: Diana.Wood@stb.dot.gov [mailto:Diana.Wood@stb.dot.gov]

Sent: Thursday, May 19, 2016 6:46 AM

To: Karl Morell <karlm@karlmorell.com>

Subject: Fw: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Karl:

Can you respond to USFWS's questions below (in this email thread) and I'll forward your response onto USFWS so we can keep the process moving.

Thanks!

Diana

Diana F. Wood

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----- Forwarded by Diana Wood/STB on 05/19/2016 06:41 AM -----

From: "Burgdorf, Shirley" <shirley_burgdorf@fws.gov>
To: <Diana.Wood@stb.dot.gov>
Date: 05/17/2016 06:14 PM
Subject: Re: Fw: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Hi Diana,

Thanks for the email and information about the project. I have a few questions and want to clarify a few things about the official consultation process.

Your email and letter ask for initiation of consultation for the project; however, we (USFWS) can't officially start the consultation until we have a biological assessment (or other document) with all the specifics about the project. Contacting us early in the process is great and helps everyone know what is coming and what we need to do. I just did not want a misunderstanding of when we can 'start the clock' to have a response back to you within the desired 30 days if an informal consultation is necessary.

From your description, it does sound like any effects will be minimal. Because the project is adjacent to suitable Oregon spotted frog habitat, I need more information about how the ties and rails will be removed. The following are just a few questions I have:

- 1) Will the work be done with heavy equipment brought to the site?
- 2) Is any vegetation removal necessary for new access routes to the site?
- 3) Where will the creosote railroad ties and the rails be disposed of?
- 4) Will standard erosion control BMPs be in use?

If it is determined that the proposed project will have "no effect" on ESA species, then consultation is not required. The determination of "no effect" to listed resources rests with the action agency. The USFWS has no regulatory or statutory authority for concurring with a "no effect" determination.

Please contact me if you have any questions.
Shirley

Shirley Burgdorf
Fish & Wildlife Biologist
U.S. Fish & Wildlife Service
510 Desmond Dr. SE, Suite 102
Lacey, WA 98503
360/534-9340

On Tue, May 10, 2016 at 7:17 AM, <Diana.Wood@stb.dot.gov> wrote:

Here are two aerial photos from BNSF to add to the email attachments below.

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----- Forwarded by Diana Wood/STB on 05/10/2016 10:15 AM -----

From: Diana Wood/STB
To: shirley_burgdorf@fws.gov
Cc: Diana Wood/STB@STB, "Karl Morell" <karim@karlmorell.com>
Date: 05/10/2016 09:47 AM
Subject: BNSF Railway Abandonment, Section 7 Consultation Code 01EWF00-2016-SLI-0092

Dear Ms. Burgdorf:

I'm in the process of preparing an environmental assessment for abandonment of a 1.43 mile segment of BNSF rail line in Thurston WA. In 2015, BNSF's attorney, Karl Morell, contacted you to determine the possible presence of threatened, endangered, and proposed species, as well as designated and proposed critical habitats and candidate species. A list of species was subsequently generated, and it appears that there may be 12 species present in or near the project area, and that a biological evaluation may be required. This email (and a formal letter to follow in the mail) initiates the Section 7 consultation process and designates BNSF as a non-federal representative to conduct any studies, as needed. BNSF anticipates that no ground disturbance would occur as a result of the abandonment because salvage would involve removing the rail line only (track, ties, and other appurtenances) but not the ballast or roadbed. Therefore, it's not clear what, if any, adverse impacts would occur on ESA species.

The EA will be served on Monday, May 16th, and I'll send you a copy then, but in the meantime, am sending the above referenced letter as well as the species list so we can start discussing what is expected to resolve this process as quickly as possible.

Thanks so much for your consideration in this matter.

Regards,

Diana Wood

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