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SERVICE DATE – APRIL 27, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 501X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN CONTRA COSTA COUNTY, CAL.

Decided: April 27, 2023

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 0.79 miles of rail line known as Line Segment 7258 between approximately milepost 1190.9 and approximately milepost 1191.69 in Contra Costa County, Cal. (the Line). Notice of the exemption was served and published in the Federal Register on March 29, 2023 (88 Fed. Reg. 18,630). The exemption is scheduled to become effective on April 28, 2023.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on April 3, 2023, recommending that three conditions be imposed on any decision granting abandonment authority.

First, OEA stated that the Line extends into the San Francisco Bay, and while the Line is not in a coastal zone itself, the proposed abandonment could still have the potential to affect nearby land or water. Accordingly, pursuant to the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1465, and the Board's environmental regulations at 49 C.F.R. § 1105.9, OEA recommended a condition requiring BNSF to consult with the California Coastal Commission and obtain state coastal management consistency certification, if necessary, and report the outcome of that consultation to OEA in order for the condition to be removed before consummation of abandonment authority.

Second, OEA stated that the National Geodetic Survey (NGS) indicated that there may be geodetic survey markers in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring BNSF to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for any geodetic survey markers that may be present in the right-of-way to be preserved.

Third, OEA stated that BNSF submitted a combined environmental and historic report and served the report on the California State Parks Office of Historic Preservation (State Historic Preservation Office), pursuant to 49 C.F.R. § 1105.8(c). The Draft EA stated that the Ferry Point Pier, which previously served as a ferry dock for both passenger and freight service, has been identified as a historic resource on the Line. OEA stated that it is continuing consultation and still determining the potential for adverse effects, the next step in the Section 106 review process

of the National Historic Preservation Act, 54 U.S.C. § 306108. Accordingly, OEA recommended a condition requiring the railroad to 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 (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process has been completed and the Board has removed this condition.

OEA issued its Final Environmental Assessment (Final EA) on April 24, 2023, indicating that no new comments were received and OEA therefore continues to recommend that the three conditions recommended in the Draft EA be imposed. Based on OEA's analysis and recommendation, the three conditions recommended in the Final EA will be imposed.

This decision, and 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. The notice served and published in the Federal Register on March 29, 2023, exempting the abandonment of the Line described above is subject to the following conditions:¹

(a) Pursuant to the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1465, and the Board's environmental regulations at 49 C.F.R. § 1105.9, BNSF shall consult with the California Coastal Commission and obtain state coastal management consistency certification, if necessary. BNSF may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed this condition.

(b) BNSF shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.

(c) BNSF shall 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 (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. BNSF shall report back to OEA regarding any consultations with the State Historic Preservation Office and the public. BNSF may not file its 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 this condition.

¹ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with the conditions set forth below is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.