

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 498X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN PAWNEE COUNTY,
OKLA.

Decided: May 24, 2019

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.74 miles of Line Segment 1047 (formerly 7401), track 5403 between milepost 6.47 and milepost 7.21 in Pawnee County, Okla. (the Line). Notice of exemption was served and published in the Federal Register on April 25, 2019 (84 Fed. Reg. 17,445). The exemption is scheduled to become effective on May 25, 2019.¹

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on April 30, 2019, recommending that two environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the National Geodetic Survey (NGS) commented that there are approximately two geodetic station markers that may be affected by the proposed abandonment. Accordingly, OEA recommended a condition that would require BNSF to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for their possible relocation.

OEA also stated that, according to BNSF, there is a remediation site adjacent to the Line that BNSF jointly manages with Phillips 66. BNSF stated that petroleum hydrocarbons above the Oklahoma Department of Environmental Quality's (DEQ) Tier 2a screening levels are present in the area of the proposed abandonment. BNSF indicated that it is in the process of deed-restricting this area and that DEQ has agreed that no further action is necessary. OEA further stated that, in a December 18, 2018 email to BNSF, DEQ's Office of External Affairs commented that DEQ completed its review of air, land, and water records for the proposed abandonment and concluded that "no environmental concerns under DEQ jurisdiction are

¹ On May 2, 2019, the National Association of Reversionary Property Owners (NARPO) filed a comment with the Board asserting that the Line is not connected to the existing BNSF mainline track that runs parallel to the Line. NARPO argues that, accordingly, there can be no interim trail use/rail banking under the National Trails System Act in this case and that the notice served in this docket should be corrected to reflect that trail use requests are not possible. As no requests for a notice of interim trail use or abandonment have been filed, the Board need not address the argument raised by NARPO.

anticipated.” DEQ sent a follow-up email dated February 27, 2019, stating that it had no additional comments on the proposed abandonment. OEA stated that, because DEQ’s correspondence made no mention of the hydrocarbon monitoring and the need to deed-restrict the area, OEA is not certain if this contamination would affect any reversionary interests along the Line, particularly if there are residential properties. OEA therefore recommended a condition that would require BNSF, prior to beginning salvage activities, to consult with DEQ to ensure that DEQ’s requirements regarding the petroleum hydrocarbon contamination have been adequately addressed and submit the results of these consultations in writing to OEA.

OEA issued its Final EA on May 17, 2019, indicating that OEA received one comment letter during the 15-day comment period. The Oklahoma Archaeological Survey (the Survey) reaffirmed its prior findings that, based on a search of its database and a review of the topographic and hydrologic setting, no archaeological sites are listed as occurring in the area of the proposed abandonment and no archaeological materials are likely to be encountered during salvage. The Survey concluded that an archaeological field inspection is not needed but did request to be immediately contacted should any unanticipated discoveries be made during the salvage process. This would include finding chipped stone tools; pottery; bones; or historic crockery, glass, metal, or building materials. Accordingly, OEA is recommending a new condition that would require BNSF, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during the railroad’s salvage activities, to immediately cease all work and notify OEA and the Survey, pursuant to 36 C.F.R. § 800.13(b). OEA would then consult with the Survey, BNSF, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary. In addition to this newly recommended condition, OEA also recommends again that the two previously recommended conditions be imposed.

Accordingly, based on OEA’s recommendation, the three conditions proposed 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. Upon reconsideration, the notice served and published in the Federal Register on April 25, 2019, exempting the abandonment of the Line described above, is subject to the conditions that BNSF shall: (1) consult with the NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for their possible relocation; (2) prior to commencement of any salvage activities, consult with DEQ to ensure that DEQ’s Tier 2a screening level requirements for the petroleum hydrocarbon contamination in the area of the proposed abandonment have been adequately addressed and submit the results of these consultations in writing to OEA; and (3) in the event that any unanticipated archaeological sites, human remains, funerary items, or

associated artifacts are discovered during the railroad's salvage activities, immediately cease all work and notify OEA and the Survey, pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the Survey, BNSF, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.