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April 18, 2013

Karl Morell
Of Counsel
kmorell@balljanik.com

E-FILED

Ms. Victoria Rutson, Esq.
Environmental Analysis Chief
Surface Transportation Board
395 E Street, SW, Room 1106
Washington, DC 20423

Re: Docket No. AB 6 (Sub-No. 485X), BNSF Railway Company --
Abandonment Exemption -- In McKinley County, California

Dear Ms. Rutson:

By decision served October 18, 2012, in the above-captioned proceeding, the Surface Transportation Board ordered BNSF Railway Company ("BNSF") to consult with the New Mexico Historic Preservation Division of the Department of Cultural Affairs ("SHPO"), the Navajo Nation Historic Preservation Department ("THPO") and the Navajo Nation Natural Heritage Program ("NNNHP").

Attached please find: (1) the response BNSF received from the SHPO finding that no historic properties will be affected by the proposed abandonment; and (2) the response BNSF received from the Fish and Wildlife Department of the NNNHP agreeing to the dismantling of the bridge structure subject to one condition.

BNSF is continuing to work with the THPO.



Ms. Victoria Rutson, Esq.
April 18, 2013
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If you have any questions, please contact me.

Sincerely,

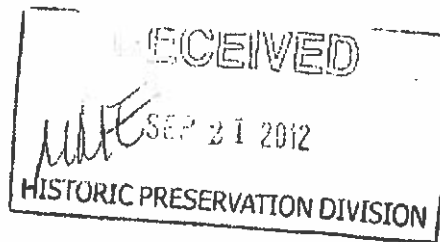
A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive, flowing style.

Karl Morell
Of Counsel

Enclosures



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95346

September 19, 2012

Karl Morell
Of Counsel
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New Mexico Historic Preservation Division
Department of Cultural Affairs
Bataan Memorial Bldg.
497 Galisteo Street Suite 236
Santa Fe, New Mexico 887501

Re: STB Docket No. AB-6 (Sub-No. 485X), BNSF Railway
Company -- Abandonment Exemption -- In McKinley County,
NM

Dear Sir/Madam:

On August 30, 2012, BNSF Railway Company ("BNSF") filed with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon the 5.11-mile rail line located between milepost 14.50 and milepost 19.61, north of Defiance in McKinley County, New Mexico (the "Line"). Attached are the Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

We are providing these reports so that you may review the information that will form the basis for the STB's independent environmental and historic analyses of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the STB's environmental review process, please contact the Office of Environmental Analysis (SEA), Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423, Telephone (202) 245-0295, and refer to the above Docket No. AB-6 (Sub-No. 485X). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to the undersigned) would be appreciated within 3 weeks.



September 19, 2012
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Your comments will be considered by the STB in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact the undersigned by telephone at (202) 638-3307 or by mail at Bail Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell
Of Counsel

Enclosures

No Historic Properties Affected

A handwritten signature in cursive script that reads "Michelle Ensey".
for NM State Historic Preservation Office

10/14/12



**PRESIDENT
BEN SHELLY
VICE PRESIDENT
REX LEE JIM**

NAVAJO FISH AND WILDLIFE

P.O. BOX 1480

WINDOW ROCK, AZ 86515

04 March 2013

13BNSF01a31

Karl Morell, Of Counsel
Ball Janik LLP
655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

Mr. Morell,

The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the BNSF Railway Company's Environmental and Historic Reports (49 C.F.R. § 1105.7 and § 1105.8) for the proposed abandonment of the 5.11-mile rail line located in McKinley County, New Mexico. The purpose of this letter is to inform you that we are granting the proposed project a Conditional Approval. The project is approved with the following condition:

[1] If the dismantling of the bridge structure is scheduled to occur during the Migratory Bird breeding season of 15 MAR - 15 AUG, a pre-action survey will be required. If an active nest is discovered on the bridge structure, a nest take permit must be obtained from the U.S. Fish and Wildlife Service for the removal of the nest, eggs, and/or nestlings to be raised artificially in a federally permitted migratory bird rehabilitation facility. The nest, eggs, and/or nestlings must be removed by a federally permitted migratory bird rehabilitator.

Please contact me at 928-871-7065 with any questions that you have concerning the review of this project.

Sincerely,

Pamela A. Kyselka, Wildlife Biologist
Navajo Natural Heritage Program
Department of Fish and Wildlife

CONCURRENCE

Gloria Tom, Director
Department of Fish and Wildlife

**BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480**

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: BNSF Railway Company Abandonment Exemption, Docket No. AB 6 (Sub-No. 485)

DESCRIPTION: BNSF proposes to abandon 5.11 miles of railroad line. Proposed activity will include the removal of track materials and one bridge. The roadbed will be left intact. If the line is railbanked, the bridge will not be removed.

LOCATION: Milepost 14.50 to milepost 19.61, north of Defiance, McKinley County, New Mexico

REPRESENTATIVE: Karl Morell, Of Counsel, Ball Janik LLP

ACTION AGENCY: BNSF Railway Company (BNSF)

B.R. REPORT TITLE / DATE / PREPARER: Environmental and Historic Reports (49 C.F.R. § 1105.7 and § 1105.8)/10 AUG 2012/BNSF

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 1 & 3. No effect determination for both tribally and federally listed species of concern.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: [1] If the dismantling of the bridge structure is scheduled to occur during the Migratory Bird breeding season of 15 MAR - 15 AUG, a pre-action survey will be required. If an active nest is discovered on the bridge structure, a nest take permit must be obtained from the U.S. Fish and Wildlife Service for the removal of the nest, eggs, and/or nestlings to be raised artificially in a federally permitted migratory bird rehabilitation facility. The nest, eggs, and/or nestlings must be removed by a federally permitted migratory bird rehabilitator.

FORM PREPARED BY / DATE: Pamela A. Kyselka/04 MAR 2013

COPIES TO: (add categories as necessary)



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2 NTC § 164 Recommendation:

Signature

Date

☐ Approval

☒ Conditional Approval (with memo)

☐ Disapproval (with memo)

☐ Categorical Exclusion (with request letter)

☐ None (with memo)


Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife

3/5/13

***I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.**

Representative's signature

Date