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SERVICE DATE – NOVEMBER 3, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 465X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KING COUNTY, WA

Decided: November 2, 2009

By decision and notice of interim trail use or abandonment (NITU) served on November 28, 2008 (November 2008 decision), the Board granted the petition for exemption filed by BNSF Railway Company (BNSF) for abandonment of a 12.55-mile rail line that extends from milepost 11.25, near Wilburton, to milepost 23.80, in Woodinville, King County, WA. The exemption was subject to environmental, historic preservation, and standard employee protective conditions,<sup>1</sup> as well as a trail use condition authorizing a 180-day period, until May 27, 2009, for King County, WA (King County) to negotiate an interim trail use/railbanking agreement with BNSF. By decision served May 12, 2009, the NITU negotiating period was extended until October 22, 2009.

In a motion filed on October 20, 2009, King County requests an extension of the NITU negotiating period for 180 days. King County states that they are continuing their negotiations with BNSF and that BNSF has authorized King County to state that it concurs with the request for an extension of time. The Port of Seattle filed a letter in support of King County's motion.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended until April 20, 2010.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>1</sup> By decision served on March 26, 2009, the section 106 historic preservation condition was removed. The environmental condition regarding fish barriers, as originally imposed in the November 2008 decision, remains in effect.

<sup>2</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. King County's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until April 20, 2010.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary