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SERVICE DATE – NOVEMBER 3, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 464X)

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

Decided: November 2, 2009

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 5.60-mile rail line between milepost 5.00, at Kennydale, and milepost 10.60, at Wilburton, in King County, WA. Notice of the exemption was served and published in the Federal Register on September 26, 2008 (73 FR 55898-99). The exemption became effective on October 28, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on October 27, 2008 (October 2008 decision), the proceeding was reopened and the exemption was made subject to environmental and historic preservation conditions,<sup>1</sup> as well as a trail use condition authorizing a 180-day period, until April 25, 2009, for King County, WA (King County) to negotiate an interim trail use/rail banking 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.

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<sup>1</sup> By decision served on April 7, 2009, the section 106 historic preservation condition was removed. The environmental conditions, as originally imposed in the October 2008 decision, remain in effect.

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

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

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