

ENTERED  
Office of Proceedings  
August 17, 2016  
Part of  
Public Record

Before the Surface Transportation Board

BNSF Railway Company - )  
Abandonment Exemption - ) AB 6 (Sub.no. 490X)  
In King County, WA )

Action Requested by September 11, 2016

Fee waiver per 49 C.F.R. 1002.2(e)(1) (City of Seattle is a local government entity)

Motion for an Extension of NITU Negotiation Period

The City of Seattle ("City") moves for a 180 day extension in the negotiation period provide under the Notice of Interim Trail Use (NITU) in this proceeding served on September 17, 2015. The NITU negotiation period currently expires on September 11, 2016. The 180 day extension extension would expire on or about March 10, 2017. This is the second extension sought.

City is authorized to state that BNSF Railway ("BNSF"), per its counsel Mr. Morell, consents to this extension. See Appendix, attached.

Grounds for Extension

 <b>GRANTED</b>	DECISION ID NO.: <u>45399</u>
	DECIDED DATE: <u>8/31/16</u>
	SERVICE DATE: <u>9/1/16</u>
	APPROVED: <u>Rachel D Campbell</u> Director

**FILING FEE WAIVED** *extended to 3/10/17*

As stated in our first extension request, the Burke-Gilman Agreements provide for "railbanking" of the right of way involved in this abandonment proceeding. City of Seattle has recently developed a property description for purposes of a deed of conveyance, but the description has not yet been reviewed by BNSF. In addition, the parties are reviewing the City's proposal on how to handle what is now described as an industrial lead the track in which belongs to an adjoining shipper (Coastal). That lead appears to be partly on right of way belonging to BNSF and partly on right of way to be conveyed to the City pursuant to the Burke-Gilman Agreements.

It is well established that a NITU extension is appropriate in circumstances such as these:

"An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Part No. 274 (Sub-no. 13B) (ICC served Feb. 5, 1990).

Wisconsin Central Ltd. - Abandonment Exemption - in Brown County, WI, AB 303 (Su-no. 20X), served Oct. 10, 2006. See also Consolidated Rail Corporation - Abandonment Exemption - in St. Joseph County, IN, AB 167 (Sub-no. 1165X), served Feb. 19, 1998.

Because the current NITU negotiation period otherwise ends on September 11, 2016, and the parties do not anticipate

completion of reviews before that date, City requests that the Board extend the NITU prior to that date in order to alleviate any jurisdictional issues. As already noted, counsel for BNSF has consented to the relief sought herein (attached Appendix).

By my signature below, undersigned counsel for City certifies service upon counsel for BNSF my USPS first class and by email as indicated in the "cc." on 18 August 2016.

Conclusion

For the reasons stated, the NITU negotiation period should be extended for 180 days through and including March 10, 2017.

Respectfully submitted,



Charles H. Montange  
Attorney for The City of Seattle  
Law Offices of Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177  
206-546-1936  
Fax: -3739  
Email: [c.montange@frontier.com](mailto:c.montange@frontier.com)

Att: Appendix (e-mail exchange)

Of counsel: Julio V.A. Carranza, Esq.  
Assistant City Attorney  
Seattle City Attorney's Office  
Civil Division - Contracts & Utilities Section  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
Phone: 206-727-3979  
Fax: 206-684-8284  
[julio.carranza@seattle.gov](mailto:julio.carranza@seattle.gov)

cc. Karl Morell  
Karl Morell & Associates  
655-15<sup>th</sup> St., NW, Suite 225  
Washington, D.C. 20005  
(by USPS, first class, and  
Email to [karlm@karlmorell.com](mailto:karlm@karlmorell.com))

Appendix on next page

**Subject:** RE: AB 6-490X, NITU extension  
**From:** Karl Morell (karlm@karlmorell.com)  
**To:** c.montange@frontier.com;  
**Cc:** James.Mecone@BNSF.com;  
**Date:** Thursday, August 18, 2016 7:09 AM

Charles, BNSF consents to the requested extension of the NITU.

Karl

---

**From:** C. Montange [mailto:c.montange@frontier.com]  
**Sent:** Wednesday, August 17, 2016 8:30 PM  
**To:** Karl Morell <karlm@karlmorell.com>  
**Subject:** AB 6-490X, NITU extension

Karl, here is a draft. I think if you send me a short email verifying consent, they will not bother you with a call or letter request.