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SERVICE DATE – LATE RELEASE APRIL 4, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 487X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN COOK COUNTY,
ILL.

Decided: April 4, 2013

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.1 miles of rail line, as follows: (1) approximately 0.50 miles of track (Sangamon Street Line) from south of Western Avenue Yard at 16th Street (Station 186+79), extending to the red board south of Cullerton Street (Station 163+50); and (2) approximately 0.60 miles of track (Lumber Street Line) from West Cermak Road at the Colonial Brick switch (Station 157+65), extending to the end of the line on Lumber Street (Station 197+81), in Chicago, Cook County, Ill. Notice of the exemption was served on March 1, 2013, and published in the Federal Register on March 6, 2013 (78 Fed. Reg. 14,622). The exemption is scheduled to become effective on April 5, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on March 11, 2013. In the EA, OEA stated that the National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment on any geodetic station markers that may be present in the project area. Accordingly, OEA recommended that a condition be imposed requiring BNSF to consult with NGS prior to beginning any salvage activities and, if NGS identifies geodetic station markers that may be affected by the proposed abandonment, requiring BNSF to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.

Comments to the EA were due on March 26, 2013. OEA states in its final EA that no comments were received. OEA continues to recommend that BNSF consult with NGS prior to beginning any salvage activities. Accordingly, the condition recommended by OEA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 18, 2013, the City of Chicago (proponent) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with BNSF for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, proponent has submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By

response filed on March 19, 2013, BNSF has indicated its willingness to negotiate with proponent for interim trail use.

Because the proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, BNSF may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Proponent also has requested imposition of a public use condition under 49 U.S.C § 10905 for the line. Proponent asks that BNSF be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that BNSF be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. Proponent's justification for its request is that these structures have considerable value for recreational trail purposes. Proponent states that the 180-day period is needed to assemble and review the title information, complete a trail plan, and begin negotiations with BNSF.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because proponent has satisfied these requirements, a 180-day public use condition will be imposed, requiring BNSF to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the April 5, 2013 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on October 2, 2013, while the trail use negotiating period will run 180 days from the service date of this decision and notice until October 1, 2013. If a trail use agreement is reached on a portion of the right-of-way prior to October 2, 2013, BNSF must keep the remaining right-of-way intact for the remainder of the 180-day public use period to permit public use

negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, BNSF is not required to deal exclusively with proponent, but may engage in negotiations with other interested persons.

As conditioned, this action 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 March 1, 2013 and published in the Federal Register on March 6, 2013, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking, as set forth below, to permit proponent to negotiate with BNSF for trail use for the line for a period of 180 days from the service date of this decision and notice, until October 1, 2013, and to permit public use negotiations for the line, as set forth below, for a period of 180 days from the April 5, 2013 effective date of the exemption, until October 2, 2013. The abandonment exemption is also made subject to the condition that, prior to commencement of any salvage activities, BNSF shall consult with NGS. If NGS identifies geodetic station markers that may be affected by the proposed abandonment, BNSF shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, BNSF may discontinue service over the line and salvage track and related materials. BNSF shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until October 2, 2013) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by October 1, 2013, for the right-of-way, interim trail use may be implemented. If no agreement is reached, BNSF may fully abandon the line.

9. This decision and notice is effective on its service date.

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