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SERVICE DATE – APRIL 1, 2010

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 471X)]

BNSF Railway Company–Discontinuance of Trackage Rights Exemption–in Alameda County, CA

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service to discontinue trackage rights over approximately 2.04 miles of rail line owned by the Alameda Beltline Railroad (ABL), running between milepost 0.00 and 2.04, in Alameda County, CA, (the Line).<sup>1</sup> The Line traverses United States Postal Service Zip Code 94501.

BNSF has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of BNSF rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the

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<sup>1</sup> One of BNSF's predecessors, The Atchison, Topeka and Santa Fe Railway Company acquired the trackage in 1982. See The Atchison, Topeka and Santa Fe Railway Company–Trackage Rights Exemption–Over Southern Pacific Transportation Company and Alameda Belt Line, Finance Docket No. 30073 (ICC served Dec. 28, 1982). BNSF states that ABL is in the process of selling the Line, as well as the remainder of its rail lines to the City of Alameda. See City of Alameda–Acquisition Exemption–Alameda Beltline Railroad, STB Finance Docket No. 34798 (STB served Jan. 11, 2006).

line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 1, 2010, unless stayed pending reconsideration.<sup>2</sup> Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2)<sup>3</sup> must be filed by April 12, 2010.<sup>4</sup> Petitions to reopen must be filed by

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<sup>2</sup> Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. BNSF has indicated a proposed consummation date of April 27, 2010, but, because the verified notice was filed on March 12, 2010, counsel for BNSF has been notified that the earliest this transaction may be consummated is May 1, 2010.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

<sup>4</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

April 21, 2010, with: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 29, 2010.

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