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SERVICE DATE – NOVEMBER 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 425X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN CHASE, MORRIS,
MARION AND DICKINSON COUNTIES, KS

Decided: November 3, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments, to abandon a 25.57-mile line of railroad between BNSF milepost 0.00 near Neva and milepost 25.45 near Lost Springs, in Chase, Morris, Marion and Dickinson Counties, KS. Notice of the exemption was served and published in the Federal Register on September 29, 2004 (69 FR 58226-27). The exemption was effective on October 29, 2004.

By decision served on October 26, 2004, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to five environmental conditions.¹ By decisions served on September 28, 2005, and May 25, 2006, the Board extended the deadline for BNSF to file its notice of consummation, with the latest extension scheduled to expire on June 1, 2007.

On October 18, 2006, Kanza Rail-Trail Conservancy (Kanza) filed a request for imposition of a public use condition and issuance of a notice of interim trail use (NITU). On October 24, 2006, BNSF replied, stating that it is not willing to negotiate a trail use agreement and that the time has lapsed for imposition of a public use condition.

Kanza's requests will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28, the Board may only impose a public use condition for up to 180 days after the effective date of a decision authorizing abandonment. Thus, the agency's jurisdiction to impose a public use condition expires at the end of that period. Because the time for imposing a public use condition in this proceeding is long past, the Board lacks jurisdiction to impose one. Therefore, the public use request must be denied.

Moreover, the Board's Trails Act authority is limited because the trail use program is voluntary and consensual between the railroad and the trail user. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591 (1986) (Trails). As such, it applies only if the

¹ The environmental conditions remain in effect.

abandoning railroad agrees to negotiate. Because BNSF has indicated that it is unwilling to negotiate a trail use agreement, a NITU will not be issued.

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

It is ordered:

1. Kanza's requests for imposition of a public use condition and for issuance of a NITU are denied.

2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary