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SERVICE DATE – NOVEMBER 16, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 455X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN STEARNS COUNTY, MN

Decided: November 15, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.79-mile line of railroad between milepost 16.21 and milepost 17.00, near Cold Spring, in Stearns County, MN (the line). Notice of the exemption was published in the Federal Register on May 2, 2007 (72 FR 24355) and served on May 7, 2007 (May 7 notice). The exemption was scheduled to become effective on June 6, 2007.

On November 27, 2006, the Minnesota Department of Transportation (Mn/DOT) and Minnesota Department of Natural Resources (DNR), collectively referred to as Proponent, filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29. Proponent submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response submitted on May 24, 2007, BNSF consented to the issuance of a NITU.

In a decision and notice of interim trail use served on June 5, 2007, the May 7 notice was modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations, for a period of 180 days commencing from the June 6, 2007 effective date of the exemption (until December 3, 2007).¹

By a pleading filed on August 8, 2007, Proponent filed a request to rescind the issuance of a public use condition and request for the NITU. Proponent states that, when MnDOT realigned Minnesota Trunk Highway 23 in the area occupied by the line, an agreement was made with DNR to acquire the adjacent railroad property when it became abandoned in a fair land exchange. Additionally, Proponent states that the two agencies agreed that DNR did not want a future reversionary right by the railroad as a part of the fair land exchange. Proponent further states that the Rocori Trail Group, the entity that seeks to develop the trail along with the DNR, would be denied state bond money without free and clear fee title holding of the property.

¹ A salvage condition was also included.

Accordingly, Proponent requests that the Board rescind their requests for a public use condition and NITU.

In a facsimile received on October 4, 2007, BNSF states that it has no plans to implement interim rail use/rail banking or to negotiate public uses for the line and concurs with Proponent's request to remove the public use condition and NITU.

Because Proponent's request is reasonable and BNSF does not object, the public use condition and the NITU will be rescinded.

It is ordered:

1. This proceeding is reopened.
2. The conditions in the June 5, 2007 decision providing for negotiations regarding potential public use and interim trail use/rail banking are rescinded.
3. BNSF may consummate the abandonment authorized in this proceeding subject to the salvage condition previously imposed.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary