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SERVICE DATE – NOVEMBER 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 408X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN HAMILTON AND
MERRICK COUNTIES, NE

Decided: November 3, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 15.60-mile line of railroad between BNSF milepost 1.90, near Aurora, and milepost 17.50, near Central City, in Hamilton and Merrick Counties, NE. Notice of the exemption was served and published in the Federal Register on March 22, 2004 (69 FR 13349-50).

By decision served on April 21, 2004, the proceeding was reopened and the exemption was made subject to several environmental conditions, which remain in effect. By decision and notice of interim trail use or abandonment (NITU) served on May 26, 2004 (May 2004 decision), the proceeding was reopened again and a 180-day period was authorized for the Nebraska Trails Foundation, Inc. (NTFI), and the Central City Community Trails Committee of Central City, NE (CCCTC), to negotiate an interim trail use/rail banking agreement, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and to permit public use negotiations, under 49 U.S.C. 10905,¹ with BNSF, for BNSF's line segment between milepost 4.37, near Aurora, and milepost 17.50, near Central City, NE.² The trail use negotiating period under the NITU was extended to January 26, 2005, by decision served on December 20, 2004. The NITU issued to NTFI expired on January 26, 2005, without an agreement being reached.³

¹ The public use condition, which is limited by statute to 180 days, expired on November 27, 2004, and may not be extended.

² The May 2004 decision also granted BNSF's request to amend its notice of exemption to remove a 2.47-mile line segment from the scope of its abandonment, from milepost 1.90 to milepost 4.37. As modified, the NITU applied only to the line segment located between milepost 4.37, near Aurora, and milepost 17.50, near Central City.

³ By decisions served on March 7, 2005, December 29, 2005, and June 28, 2006, the Board granted requests from BNSF for extensions of time to file its notice of consummation, most recently until December 31, 2006.

On October 16, 2006, NTFI filed a request to extend the NITU negotiating period so that it can complete an agreement and close on the transaction in January 2007. On October 31, 2006, NTFI filed a clarification of its request. NTFI states that the extension request was filed on behalf of it and CCCTC, and applies only to the 7.87-mile portion of the right-of-way between milepost 9.63, near Marquette, and milepost 17.50, near Central City. NTFI states that, with the pledge of financial support from the Merrick Foundation of Central City, NE, it has negotiated a purchase agreement with BNSF for the line and that it anticipates signing a sale agreement within a few weeks. By letter filed on October 24, 2006, BNSF states that it does not object to the extension request.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension.⁴ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended until January 31, 2007.⁵

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

It is ordered:

1. The request to extend the NITU negotiating period for the portion of the right-of-way between milepost 9.63, near Marquette, to milepost 17.50, near Central City, is granted.
2. The negotiating period under the NITU is extended to January 31, 2007.

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁵ Because NTFI did not indicate a specific date in its request, the Board will grant the NITU extension until January 31, 2007.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary