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SERVICE DATE – LATE RELEASE MAY 8, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 480X)
BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN OKLAHOMA COUNTY, OKLA.

Decided: May 8, 2012

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 1.22 miles of rail line extending between milepost 541.69 and milepost 542.91 in Oklahoma City, Oklahoma County, Okla. (the Line).¹ Notice of the exemption was served and published in the Federal Register on April 9, 2012 (77 Fed. Reg. 21,154). The exemption is scheduled to become effective on May 9, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on April 13, 2012, requesting comments by April 27, 2012. In the EA, OEA recommended that the Board not impose environmental conditions on any decision granting abandonment authority. No comments to the EA were filed by the April 27, 2012 due date. Therefore, no conditions will be imposed. Because no environmental or historic preservation issues have been raised by any party or identified by OEA, a Finding of No Significant Impact under 49 C.F.R. §1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On April 13, 2012, the City of Oklahoma City (OKC) filed a request for 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, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. OKC has also submitted a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required under 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to the user's

¹ The Line previously was part of a larger BNSF line that was the subject of a notice of exemption filed in BNSF Ry.—Aban. Exemption—in Oklahoma County, Okla., AB 6 (Sub-No. 430X) (STB served Oct. 13, 2005). By a decision served on June 5, 2008, the Board granted a petition to reopen the proceeding and reject BNSF's notice of exemption as void ab initio on the grounds that BNSF had provided service on a portion of the line to the east of the Line here during the two-year period prior to the filing of that notice.

continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on April 18, 2012, BNSF states that it does not object to the issuance of the requested NITU.

Because OKC's request complies the requirements of 49 C.F.R. § 1152.29, and BNSF is willing to negotiate with OKC for trail use, a NITU will be issued to OKC. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

This decision and notice 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. Abandonment of the involved rail line will have no significant effect on the quality of the human environment or the conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on April 9, 2012, 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 OKC to negotiate with BNSF for trail use of the subject Line for a period of 180 days commencing from the service date of this decision and notice (until November 2, 2012).
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Use of the right-of-way for interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by November 2, 2012, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its date of service.

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