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SERVICE DATE – MAY 10, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 474X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN WASHINGTON  
COUNTY, MINN.

Decided: May 10, 2012

This decision grants an extension of time to negotiate a trail use/rail banking agreement.

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.51-mile line of railroad between milepost 15.59 and milepost 16.10 in Washington County, Minn. (the Line). Notice of the exemption was served and published in the Federal Register on July 14, 2011 (76 Fed. Reg. 41,558-59). The exemption became effective on August 13, 2011.

By decision and notice of interim trail use or abandonment (NITU) served on October 31, 2011, the proceeding was reopened and a 180-day period was authorized to permit public use negotiations pursuant to 49 U.S.C. § 10905 and to permit Washington County, Minn. (the County), a local government unit interested in transportation and recreation, to negotiate, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), an interim trail use/rail banking agreement with BNSF for the right-of-way. The public use condition expired on February 9, 2012 (180 days from the effective date of the exemption); the negotiating period under the NITU expired on April 28, 2012 (180 days after it was imposed).

By letter filed on April 16, 2012, the County requests an additional 120-day period to continue negotiations with BNSF.<sup>1</sup> The County states that it remains engaged in discussions with BNSF towards a desired outcome for all parties for a trail use/rail banking agreement. By letter filed on April 18, 2012, BNSF states that it does not object to the requested extension of the negotiating period under the NITU.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board

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<sup>1</sup> The County's request does not clearly distinguish between interim trail use/rail banking under the NITU and the public use condition. Under 49 U.S.C. § 10905, a public use condition may not be extended beyond the initial 180 days. The County's request therefore is construed as pertaining only to the trail use negotiating period under the NITU.

retains jurisdiction, and the NITU negotiating period may be extended.<sup>2</sup> 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for 120 days (until August 26, 2012).

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. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 26, 2012.
3. This decision is effective on its service date.

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

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<sup>2</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).