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SERVICE DATE - APRIL 8, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 406X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION— IN RENO COUNTY, KS

Decided: April 5, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a line of railroad between BNSF milepost 0.62 and milepost 3.50, near South Hutchinson, in Reno County, KS, a distance of approximately 2.88 miles. Notice of the exemption was served and published in the Federal Register on March 11, 2004 (69 FR 11707). The exemption is scheduled to become effective on April 10, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 16, 2004. In the EA, SEA states that the National Geodetic Survey (NGS) has identified six geodetic station markers that could be affected by the proposed abandonment. Therefore, SEA recommends that BNSF provide NGS with 90 days' notice before beginning any salvage activities in order to plan for the potential relocation of the geodetic station markers. Comments to the EA were due by March 31, 2004. No comments were received by the due date. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

On February 25, 2004, the City of South Hutchinson, KS (the City), filed a request for the issuance of a notice of interim trail use (NITU) for the subject line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising from 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. In a response submitted on March 25, 2004, BNSF states that it supports the issuance of a NITU.

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. 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. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on March 11, 2004, 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, for a period of 180 days commencing from the April 10, 2004 effective date of the exemption (until October 7, 2004), and subject to the condition that BNSF provide NGS with 90 days' notice before beginning salvage activities in order to plan the relocation of the six geodetic station markers that may be affected by the abandonment.
3. 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 from 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.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by October 7, 2004, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the condition imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

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

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

Vernon A. Williams
Secretary