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SERVICE DATE – JANUARY 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 434X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
FERGUS COUNTY, MT

Decided: December 29, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad between milepost 9.50 near Moore, MT, and milepost 28.35 near Lewiston, MT, the 1.30-mile Berg Lumber Spur (milepost 0.00 – milepost 1.30), and the Heath Spur (milepost 0.00 – milepost 1.10), a total distance of 21.25 miles in Fergus County, MT. Notice of the exemption was served and published in the Federal Register on December 14, 2005 (70 FR 74108-09). The notice provided that, if consummation of the abandonment has not been effected by BNSF's filing of a notice of consummation by December 14, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

By decision and notice of interim trail use or abandonment (NITU), served on January 11, 2006, the proceeding was reopened and a 180-day period (until July 12, 2006) was authorized for the City of Lewistown, MT, to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way in this proceeding. That decision and notice also imposed a public use condition (which expired on July 12, 2006) and five environmental conditions, including a historic preservation condition. By decision served on May 17, 2006, the proceeding was again reopened for modification of the historic condition. All of the environmental conditions remain in effect.

By decision served on July 11, 2006, the negotiating period under the NITU was extended to January 8, 2007.

On December 13, 2006, BNSF filed a request to extend, until June 14, 2007, the time to file its notice of consummation. BNSF states that the time is needed in order to resolve the pending historic condition.

Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. Because the Board continues to have jurisdiction over this proceeding due to the pending environmental and historic conditions, BNSF would not have needed to seek an extension of the consummation deadline until those conditions have been satisfied or removed. Nonetheless, because the original consummation date has recently passed and BNSF has requested an extension, the

deadline for filing the notice of consummation in this proceeding will be extended, as requested, to June 14, 2007.

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

It is ordered:

1. BNSF's request for an extension of time to file a notice of consummation is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before June 14, 2007.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary