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SERVICE DATE – LATE RELEASE JUNE 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 455X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN STEARNS COUNTY, MN

Decided: June 5, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.79-mile line of railroad between milepost 16.21 and milepost 17.00, near Cold Spring, in Stearns County, MN. Notice of the exemption was published in the Federal Register on May 2, 2007 (72 FR 24355) and served on May 7, 2007. The exemption is scheduled to become effective on June 6, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 11, 2007. In the EA, SEA noted that the Natural Resources Conservation Service (NRCS) has indicated that the proposed abandonment would not impact agricultural lands, and that a Federal Farmland Policy Protection Act site assessment is not required. However, NRCS noted that, if impacts to wetlands owned or operated by participants of the Wetlands Reserve Program (WSP) are anticipated, BNSF should contact the county Farm Service Agency office (FSA) to consider an application for a third party exemption.¹ Therefore, SEA recommends that BNSF shall consult with the Beltrami County FSA Office prior to commencement of any salvage activities regarding potential impacts to wetlands owned or operated by USDA participants and shall comply with its reasonable requirements.

Comments to the EA were due by May 25, 2007. A comment was received by the Tribal Historic Preservation Officer of the Leech Lake Band of Objjwe, who stated that the Leech Lake Band of Objjwe does not have any concerns regarding sites of religious or cultural importance in the area of the proposed abandonment. Accordingly, the condition recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the rail line. On November 27, 2006, the Minnesota Department of Transportation and Minnesota Department of Natural Resources (Proponent) filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. Proponent has submitted a statement of

¹ NRCS, part of U.S. Department of Agriculture (USDA), administers the WSP, which is a voluntary program to restore and protect wetlands on private property.

willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response submitted on May 24, 2007, BNSF consents to the issuance of a NITU.

Because Proponent'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 subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because Proponent has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 6, 2007 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, BNSF must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, BNSF is not required to deal exclusively with Proponent, but may engage in negotiation with other interested persons.

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. This proceeding is reopened.
2. Upon reconsideration, the notice published in the Federal Register on May 2, 2007 and served on May 7, 2007, exempting the abandonment of the line described above, is modified

to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the June 6, 2007 effective date of the exemption (until December 3, 2007), and subject to the condition that BNSF shall consult with the Beltrami County FSA Office prior to commencement of any salvage activities regarding potential impacts to wetlands owned or operated by USDA participants and shall comply with its reasonable requirements.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, BNSF may discontinue service and salvage track and related materials. BNSF shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before December 3, 2007, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

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. 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.

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 December 3, 2007, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

10. This decision is effective on its service date.

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

Vernon A. Williams
Secretary