

SERVICE DATE – JUNE 6, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: June 6, 2007

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 Lewistown, 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 exemption became effective on January 13, 2006.

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 recommended by the Board's Section of Environmental Analysis (SEA), including a condition requiring BNSF to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. By decision served on May 17, 2006, the proceeding was again reopened for modification of the section 106 historic condition. On July 11, 2006, a decision was served that extended the negotiating period under the NITU to January 8, 2007, and by decision served on January 5, 2007, BNSF was granted an extension of time to file its notice of consummation of the abandonment until June 14, 2007. Also on January 5, 2007, BNSF filed a letter advising the Board that it was rail banking that portion of the line between mileposts 13.88 and 28.35, including the two spurs.¹

On January 19, 2007, BNSF filed a letter requesting authority merely to discontinue service over the portion of the subject line between milepost 9.50 and milepost 13.88, as opposed to authority to abandon that portion of the line. BNSF states that it now intends to use that portion for car storage.

¹ According to information provided by BNSF to SEA, BNSF entered into a trail use/rail banking agreement with the City of Lewistown on December 11, 2006.

The Board's grant of regulatory approval through a carrier's filing of a notice of exemption permits, but does not require, the transaction to proceed. BNSF's request for modification, which narrows the authorization previously received, is reasonable and will be granted. As a result, BNSF will no longer have authorization to abandon the portion of the line between mileposts 9.50 and 13.88 without first seeking Board authority and complying with all applicable regulations.

In addition, SEA states that BNSF has now filed correspondence indicating that it has complied with the requirements of the section 106 condition, as modified by the Board's May 17, 2006 decision. BNSF adds that, because the rail corridor to be abandoned has been rail banked and it has satisfied the section 106 condition, the Montana Historical Society (the Montana State Historic Preservation Office) has concurred with BNSF's determination that there will be no adverse effect on historic properties listed in or eligible for inclusion in the National Register of Historic Places along the rail corridor as a result of the proposed abandonment. Therefore, based on comments received, SEA recommends that the section 106 historic preservation condition imposed by the Board in this proceeding be removed.

Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This action 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. BNSF's request for modification of the authority previously granted in this proceeding is granted and BNSF may therefore discontinue service over, but not abandon, the portion of the subject line between milepost 9.50 and milepost 13.88.
3. The section 106 historic preservation condition imposed in the decision served on January 11, 2006, and modified in the decision served on May 17, 2006, is removed.
4. This decision is effective on the service date of this decision.

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

Vernon A. Williams
Secretary