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SERVICE DATE - OCTOBER 1, 1998

SURFACE TRANSPORTATION BOARD

DECISION

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

STB Docket No. AB-6 (Sub-No. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--  
ABANDONMENT EXEMPTION--IN GARFIELD AND LOGAN COUNTIES, OK

Decided: September 29, 1998

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. Notice of the exemption was served and published in the Federal Register on May 6, 1998 (63 FR 25132-33). The exemption was scheduled to become effective on June 5, 1998, provided no formal expression of intent to file an offer of financial assistance (OFA) was filed.

By petition filed May 18, 1998, the Oklahoma Department of Transportation (ODOT) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. By letter dated June 1, 1998, BNSF indicated its agreement to a trail use condition.

Also on May 18, 1998, the Oklahoma Department of Transportation (ODOT) timely filed a notice of intent to file an offer of financial assistance (OFA). The filing of the notice of intent automatically stayed the effective date of the exemption until June 15, 1998. By decision served June 2, 1998, the Board held the requests for issuance of a notice of interim trail use and for issuance of a public use condition in abeyance pending completion of the OFA process.<sup>1</sup> On June 5, 1998, BNSF filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to permit it to develop and submit the required information/and or otherwise complete voluntary negotiations for the transfer of the line. BNSF stated that it had provided some data to ODOT, but had not provided all of the requested information in view of time constraints and ongoing negotiations. ODOT did not object and supported the extension.

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<sup>1</sup> The June 2, 1998 decision also imposed an environmental condition requiring that BNSF, while conducting salvage activities, not store rail, ties, or salvage equipment in the 100-year floodplain.

On August 6, 1998, ODOT filed a notice of intent to proceed with interim trail use and rail banking under 49 CFR 1152.29(d). ODOT stated that, in the event that the parties were unable to reach an agreement under a NITU by September 1, 1998, it would like the Board to issue a procedural schedule for filing an OFA under 1152.27(c). ODOT stated that BNSF had not provided all of the information that it requested under 49 CFR 1152.27(a) to file an OFA. By letter filed August 7, 1998, BNSF stated that it and ODOT had reached an agreement in principle on the terms of a transfer of the right-of-way and anticipated executing an interim trail use/rail banking agreement in the near future. BNSF also concurred in the request for relief by ODOT. By decision served August 14, 1998, the proceeding was reopened and the request for issuance of a notice of interim trail use was held in abeyance and BNSF and ODOT were given the opportunity to negotiate an interim trail use/rail banking agreement for the right-of-way. In the same decision, BNSF was directed to provide ODOT with the requested information to enable ODOT to file an OFA. The time period for ODOT to file its OFA was extended to October 1, 1998, and the effective date of the exemption was postponed until October 11, 1998.

By facsimile submission received on September 29, 1998, ODOT seeks an extension of the OFA period until October 20, 1998. ODOT states that the extension request has the consent of BNSF and that it is continuing to negotiate with BNSF for an interim trail use/rail banking agreement, but has not been able to finalize an agreement.

Under section 1152.27(c)(2)(ii)(C), the Board will entertain petitions to toll the period for filing OFAs when good cause is shown. Accordingly, the extension request will be granted and the time for filing an OFA will be extended to October 20, 1998. The exemption effective date will be further postponed to October 30, 1998--10 days after the due date for filing an OFA.

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

It is ordered:

1. The time for offerors to file an offer of financial assistance is tolled until October 20, 1998.
2. The effective date of the exemption is further postponed until October 30, 1998.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary