

37432  
DO

SERVICE DATE – OCTOBER 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 442X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BOULDER  
COUNTY, CO

Decided: October 24, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F Exempt Abandonments to abandon a 1.13-mile line of railroad extending between milepost 36.72 and milepost 35.59, near Longmont, in Boulder County, CO. Notice of the exemption was served and published in the Federal Register on August 31, 2006 (71 FR 51886). The exemption was scheduled to become effective on September 30, 2006.<sup>1</sup>

On October 11, 2006, the City of Longmont, Colorado (the City), late-filed a request for the issuance of a notice of interim trail use (NITU) for the subject line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29.<sup>2</sup> The City submitted a statement of willingness to assume financial responsibility for the 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, as required at 49 CFR

---

<sup>1</sup> By decision served on September 28, 2006, the proceeding was reopened and the exemption was made subject to the conditions that BNSF: (1) notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station marker identified by NGS; and (2) consult with the U.S. Fish and Wildlife Service prior to beginning salvage activities regarding its recommendations for conducting habitat assessments, trapping studies, or provide other recommendations pursuant to the provisions of the Endangered Species Act, and report the results of these consultations to the Board's Section of Environmental Analysis in writing. The environmental conditions remain in effect.

<sup>2</sup> The August 31, 2006 notice of exemption provided that requests for trail use/rail banking had to be filed by September 11, 2006. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By letter filed on October 12, 2006, BNSF states that it does not object to 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, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-or-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, 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. The late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the notice of exemption served and published in the Federal Register on August 31, 2006, 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 to permit the City to negotiate with BNSF for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until April 24, 2007), and subject to the conditions imposed in the September 28, 2006 decision.
4. If an interim trail use/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 of 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 April 24, 2007, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided that the environmental conditions imposed in the September 28, 2006 decision are met.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary