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SERVICE DATE – LATE RELEASE SEPTEMBER 30, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 428X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN COLFAX
COUNTY, NM

Decided: September 30, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 36.90-mile line of railroad between milepost 0.00 near French, and milepost 36.90 near York Canyon, in Colfax County, NM. Notice of the exemption was served and published in the Federal Register on June 21, 2005 (70 FR 35777-78). The exemption was scheduled to become effective on July 21, 2005, but on June 28, 2005, Hust Brothers, Inc. (HBI), timely filed a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days (until July 31, 2005).

On July 15, 2005, Colfax Land and Cattle Company, LLC (Colfax), a New Mexico limited liability company, and Vermejo Park, LLC (Vermejo), a Georgia limited liability company, late-filed separate formal expressions of intent to file an OFA. Subsequently, Colfax and Vermejo filed separate petitions to toll the OFA filing deadline, until 15 days after BNSF provided the information prescribed in 49 CFR 1152.27(a). By decision served on July 21, 2005, Colfax's and Vermejo's late-filed notices of intent to file an OFA were accepted and BNSF was directed to notify the Board in writing when the requested information was provided to Colfax and Vermejo so that the due date for filing OFAs and the effective date of the exemption could be determined. On July 29, 2005, BNSF requested the Board to hold the proceeding in abeyance for 30 days to permit the parties to continue negotiations for the possible sale of the rail corridor outside of the OFA process. By decision served on August 11, 2005 (August 2005 decision), the proceeding was held in abeyance for 30 days from the service date of the decision, and BNSF was directed to report to the Board on the status of the negotiations within the 30-day period.¹

¹ In the August 2005 decision, the request filed on June 28, 2005 by MTHB, LLC for issuance of a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, was also held in abeyance pending completion of the OFA process.

As part of its status report filed on September 9, 2005, BNSF requests that the Board hold the proceeding in abeyance for an additional 30 days to permit the parties to continue negotiations. The negotiations appear to be progressing, but, according to BNSF, the parties need more time. By letter filed on September 23, 2005, BNSF indicates that HBI agrees to the requested extension and that Colfax and Vermejo do not oppose the extension request.

The request to hold the proceeding in abeyance for an additional 30 days is reasonable and will be granted. BNSF is directed to notify the Board as to the status of the negotiations by October 11, 2005.

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

It is ordered:

1. BNSF's request to hold this proceeding in abeyance for an additional 30 days is granted.
2. This proceeding will be held in abeyance for an additional 30 days from the date of expiration of the previous period.
3. BNSF is directed to report to the Board on the status of the negotiations by October 11, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary