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SERVICE DATE – DECEMBER 14, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

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

BNSF Railway Company—Abandonment Exemption—in Fergus County, MT

BNSF Railway Company (BNSF) has 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 Lewiston, 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. The line traverses United States Postal Service Zip Codes 59457 and 59464.

BNSF has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50 (d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 13, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 U.S.C. 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by December 27, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 3, 2006, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606-6677.

If the verified notice contains false or misleading information, the exemption is void ab initio.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

³ Each trail use request must be accompanied by the filing fee, which currently is set at \$200. See 49 CFR 1002.2(f)(27).

BNSF has filed an environmental and historic report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 19, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 14, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

On December 1, 2005, the Board of Commissioners of Fergus County, MT (Fergus County), filed an objection to the notice. Fergus County raises a number of concerns about the proposed abandonment, but provides no basis for the Board to reject the notice. However, should the County desire to seek a stay of the effectiveness of the exemption, it may do so, keeping in mind the deadline set forth in this notice. Also a petition to revoke the exemption under 49 U.S.C. 10502(d) after its effectiveness may be filed at any time.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: December 6, 2005.

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

Vernon A. Williams

Secretary