

BEFORE THE
SURFACE TRANSPORTATION BOARD

Abandonment of a line of Railroad
Between BNSF 9.50 near Moore, Montana,
and M.P. 28.35 near Lewistown, Montana,
and between M.P. 0.00 and M.P. 1.30 and
between M.P. 0.00 and M.P. 1.10 near
Lewistown, in Fergus County, Montana

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

OBJECTION TO NOTICE OF EXEMPTION

The Board of Commissioners of Fergus County Montana respectfully state as follows:

1. The Board of Commissioners of Fergus County, Montana, hereinafter referred to as the "Board" are the Legislative and Executive authority for Fergus County, Montana, and are authorized to act on behalf of the citizens Fergus County. The Board consists of three commissioners, whose names are John Jensen, Ken Ronish, and Carl Seilstad.

2. The Board is the entity filing this Objection to the Notice of Exemption filed by the Burlington Northern Sante Fe Railroad Company. The address of the Board is 712 W. Main, Lewistown, Montana 59457. The telephone number for the Board is 406-538-5119.

3. The Board received notice from the Burlington Northern Sante Fe Railroad Company that they intended to file a Notice of Exemption, seeking permission to abandon the rail line identified in the caption of this document. The Board understands that the Notice of Exemption was filed with the Surface Transportation Board on November 25, 2005. The Board has been provided with a copy of the railroad's Environmental Report and its Historical Report.

4. The Board objects to the Notice of Exemption on the following grounds:

A. The Board had attempted to negotiate a Donation Contract with the railroad company; however the railroad company was not willing to discuss any reasonable alternatives to its proposed contract language. The language proposed by the railroad would have made Fergus County responsible for all unknown environmental damages. Many other provisions of the proposed donation contract were likewise one sided and unfair. Fergus County officials have not been allowed to inspect the rail line properties in question to facilitate a due diligence assessment. Fergus County remains interested in maintaining a rail corridor for potential rail service; however due to BNSF's unreasonable negotiating stance, Fergus County was unable to reach agreement with the railroad.

B. Fergus County has hopes of developing an industrial park at the regional airport through the Fergus County Port Authority, a subunit of Fergus County Government. The railroad line is adjacent to the airport, and if the corridor is lost, then any plan to develop such a park would be most likely unsuccessful.

C. There may be alternative uses for the rail corridor sought to be abandoned. The Board believes that additional time is needed to explore these possibilities. If abandonment takes place by the Notice of Exemption process, the Board will not be able to adequately investigate or pursue these alternatives.

D. The Board would like the ability to determine if there are environmental problems on the corridor. The environmental report which has been filed with the Surface Transportation Board lists only three small areas where hazardous materials are known to exist. BNSF has not conducted a full environmental assessment on the line and will not give assurance to Fergus County that it will protect the County from future potential liability exposure due to hazardous material findings.

The Board is concerned about the potential of hazardous materials on the roadbed, and requests that the STB order that BNSF undertake, at the STB's direction, a complete Environment Assessment of the line; or alternatively the STB order that the BNSF turn the line over to Fergus County as they proposed to do, but BNSF should accept any future liabilities for hazardous material issues.

5. The Board requests that the STB facilitate the donation of the line to Fergus County, which was originally anticipated by the parties; on

such terms and conditions which are fair and reasonable. In addition, the Board requests that any STB hearings in this matter be held in Fergus County.

The foregoing Objection to Notice of Exemption is authorized for electronic filing with the Surface Transportation Board on or after November 30, 2005; by order of the Board of Commissioners of Fergus County.

DATED this 1st day of December, 2005.



Chairman of the Board of Commissioners

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing OBJECTION TO NOTICE OF EXEMPTION was duly served upon MICHAEL A. SMITH, at the address as shown below, by depositing the same in the United States mail, postage prepaid, on December 1, 2005.

Michael A. Smith
Freeborn & Peters LLP
Attorney at Law
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677



THOMAS P. MEISSNER
Fergus County Attorney