

CHARLES H. MONTANGE  
ATTORNEY AT LAW  
426 NW 162ND STREET  
SEATTLE, WASHINGTON 98177  

---

(206) 546-1936  
FAX (206) 546-3739



ENTERED  
Office of Proceedings  
AUG 31 2009  
Part of  
Public Record

28 August 2009  
by express

Hon. Anne Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, D.C. 20024

225664

Re: The Burlington Northern and Santa Fe Railway Co. --  
Abandonment Exemption - in Garfield and Logan  
Counties, OK, Docket AB 6 (Sub-no. 379X)

Dear Ms Quinlin:

Enclosed please find an original and ten copies of a Motion to Substitute Interim Trail Manager, jointly submitted on behalf of Oklahoma Department of Transportation and Montoff Transportation Company LLC ("Montoff"). In compliance with 49 C.F.R. 1152.29(f), attached to the motion as Exhibit A is Montoff's "Statement of Willingness" and as Exhibit B is the original "Notice of Interim Trail Use." Montoff's check in the amount of \$250 as filing fee for the "Statement of Willingness" is also enclosed. Copies are being served upon BNSF as indicated in the certificate of service. The parties seek an effective date of September 30, 2009, for the new NITU embodying the shift in trail managers contemplated in the motion.

Thank you for your assistance in this matter.

Very truly,  
  
Charles H. Montange  
Attorney for Montoff Transportation  
Company LLC

Encls.

cc. Counsel, ODOT (w/encl.)  
Counsel, BNSF (w/encl.)

Before the Surface Transportation Board

The Burlington Northern and )  
Santa Fe Railway Company - )  
Abandonment Exemption - ) AB 6 (sub-no. 379X)  
Garfield and Logan Counties, )  
Oklahoma )

Motion to Substitute  
Interim Trail Manager

This is a joint motion by Oklahoma Department of Transportation ("ODOT") and Montoff Transportation Company LLC ("Montoff") to substitute Montoff as interim trail manager for the 42.80 mile long rail line more particularly described as MP 73.60 near Fairmont to MP 116.40 near Guthrie. In particular, pursuant to 49 C.F.R. 1152.29(f), ODOT and Montoff request termination of interim trail manager status for ODOT and initiation of interim trail manager status for Montoff for this line effective September 30, 2009, or as soon thereafter as closing occurs.

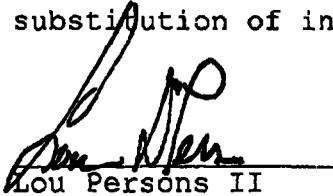
The extant Notice of Interim Trail Use (NITU) was served in this proceeding on October 27, 1998. A copy is attached as Exhibit A.

A copy of Montoff's "statement of willingness" as required by 49 C.F.R. 1152.29(f)(1)(ii) is attached as Exhibit B.

Pursuant to 49 C.F.R. 1152.29(f)(2), the parties indicate that transfer of responsibility is intended to transfer on September 30, 2009, or as soon thereafter as final environmental reviews are complete.

In accordance with the above and 49 C.F.R. 1152.29(f)(2), ODOT and Montoff request the Board to vacate the existing NITU

In accordance with the above and 49 C.F.R. 1152.29(f)(2), ODOT and Montoff request the Board to vacate the existing NITU and to issue an appropriate replacement NITU embodying the substitution of interim trail managers.



Lou Persons II  
Assistant General Counsel  
Office of the General Counsel  
Oklahoma Department  
of Transportation  
200 Northeast 212st St.  
Oklahoma City, OK 73105  
(405) 521-2634  
fax: (405) 522-0674  
for Oklahoma Dept. of  
Transportation

Respectfully submitted,



Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177  
(206) 546-1936  
fax: (206) 546-3739  
for Montoff Transportation  
Company LLC

Certificate of Service

I hereby certify service this 28<sup>th</sup> day of August, 2009, upon Kristy Clark, Esq., Law Department, BNSF, 2500 Lou Menk Drive AOB-3, Fort Worth, TX 76131-2828, by U.S. Mail, postage pre-paid, first class, and by courtesy email addressed to Kristy.Clark@bnsf.com.

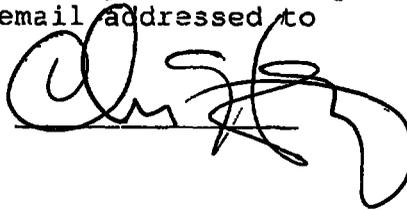


Exhibit A

Before the Surface Transportation Board

The Burlington Northern and )  
Santa Fe Railway Company - )  
Abandonment Exemption - ) AB 6 (sub-no. 379X)  
Garfield and Logan Counties, )  
Oklahoma )

Statement of Willingness  
to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, Montoff Transportation Company LLC is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless 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 owned and operated by State of Oklahoma by and through its agency Oklahoma Department of Transportation ("ODOT"). The property, known as "the Fairmont to Guthrie line," extends from railroad milepost 73.60 near Fairmont to railroad milepost 116.40 near Guthrie, a distance of 42.80 miles, in Garfield and Logan Counties, OK. The right-of-way is part of a line of railroad proposed for abandonment in docket no. AB-6 (Sub-no. 397X).

A map of the property depicting the right-of-way is attached.

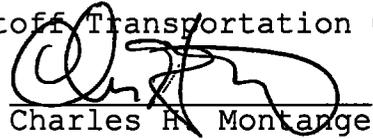
Montoff Transportation Company LLC acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail

service. A copy of this statement is being served on ODOT (counsel Louis Persons II at his address on the Motion to Substitute to which this is attached) and upon the Burlington Northern and Santa Fe Railway per the certificate of service on said Motion on the same date it is being served on the Board.

Respectfully submitted,

Montoff Transportation Company LLC

By:



Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177  
(206) 546-1936  
Counsel for Montoff  
Transportation Company LLC

Guthrie to Fairmont

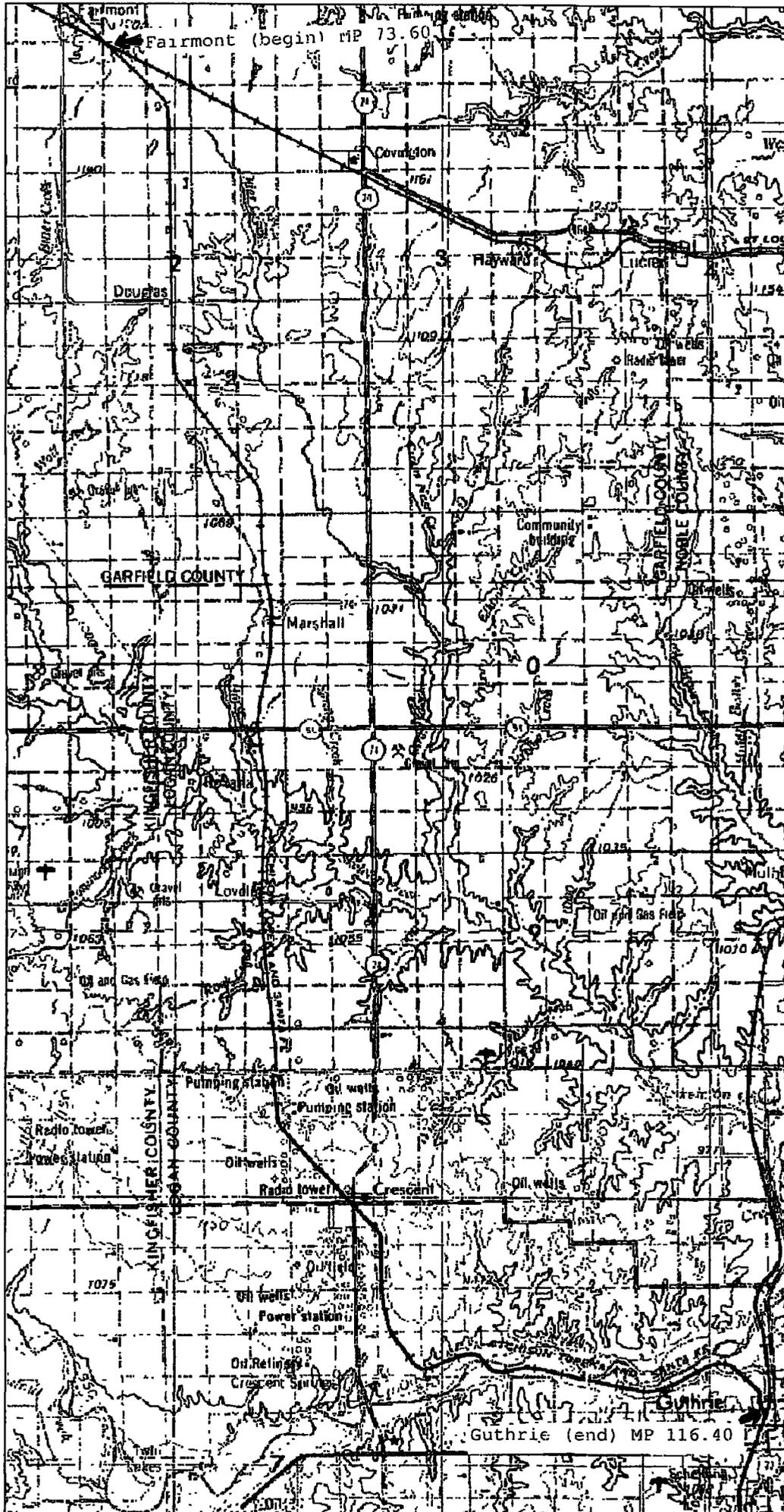


Exhibit B

29702  
DO

SERVICE DATE - OCTOBER 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT  
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: October 23, 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.

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 states that, in the event that the parties are unable to reach an agreement under a NITU by September 1, 1998, it would like the Board to issue a

---

<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.

procedural schedule for filing an OFA under 49 CFR 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 anticipate 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 filed for an extension of the OFA period until October 20, 1998. ODOT stated that BNSF had consented to the extension request. By decision served October 1, 1998, the time for filing an OFA was tolled until October 20, 1998, and the effective date of the exemption was postponed until October 30, 1998.

On October 22, 1998, ODOT submitted a letter stating that it and BNSF have reached an agreement with respect to trail use/rail banking and are circulating the documentation for signature. ODOT states that, based on the assumption that the document will be signed, it no longer intends to file an OFA and requests that the Board issue a notice of interim trail use. ODOT also states that BNSF concurs in the request.<sup>2</sup>

The Board in its June 2 decision held the request for issuance of a notice of interim trail use in abeyance pending completion of the OFA process. With the termination of the OFA process, it is now appropriate to issue a notice of interim trail use or abandonment and to impose a public use condition.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on May 6, 1998, exempting the abandonment of the line described above is modified to the

---

<sup>2</sup> ODOT states that the agreement between it and BNSF provides that closing will not occur until after the NITU is issued.

extent necessary to implement interim trail use/rail banking as set forth below, subject to the condition that BNSF keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the effective date of this decision (in this case the service date of this decision) to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

3. The decision served on August 14, 1998, is vacated and a Notice of Interim Trail Use/rail banking is issued for the line 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.

4. If an interim trail use/rail 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 (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. 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.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision (April 25, 1999), interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line.

7. Subject to the public use and trail use provisions above, BNSF's abandonment exemption will become effective on the service date of this decision.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary