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KARL MORELL



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September 3, 2009

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

ENTERED
Office of Proceedings

SEP - 3 2009

Part of
Public Record

Re: STB Docket No. AB-6 (Sub-No. 379X), The Burlington Northern
And Santa Fe Railway Company – Abandonment Exemption -- In
Garfield and Logan Counties, OK

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of the Reply To Motion
To Substitute Interim Trail Manager.

Please time and date stamp the extra copy of the Reply and return it with
our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 379X)



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN GARFIELD AND LOGAN COUNTIES, OK

REPLY TO MOTION TO SUBSTITUTE INTERIM TRAIL MANAGER

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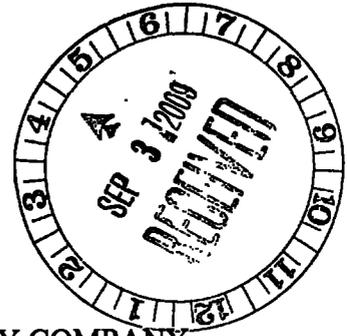
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Attorneys for:
BNSF Railway Company

Dated: September 3, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 379X)



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN GARFIELD AND LOGAN COUNTIES, OK

REPLY TO MOTION TO SUBSTITUTE INTERIM TRAIL MANAGER

BNSF Railway Company (“BNSF”)¹ hereby replies in opposition to the Motion to Substitute Interim Trail Manager jointly filed by the Oklahoma Department of Transportation (“ODOT”) and Montoff Transportation Company (“Montoff”) on August 31, 2009 (“Motion”).

By decision served October 27, 1998, in this proceeding, the Surface Transportation Board (“Board”) granted ODOT’s request for the issuance of a notice of interim trail use (“NITU”). Shortly thereafter BNSF and ODOT entered into an Interim Trails Use/Railbanking Agreement (“Trail Agreement”).

BNSF opposes the Motion at this time on two grounds. First, BNSF has no knowledge as to whether Montoff is a “qualified private organization” within the meaning of 16 U.S.C. § 1247(d) (“Trails Act”). Second, BNSF retained a right of first refusal to repurchase track materials on the applicable line. It is unclear whether the arrangement between Montoff and ODOT preserves BNSF’s contractual rights. Unless these concerns are satisfied, BNSF has no choice other than to oppose the requested substitution of the interim trail manager.

¹ Effective January 20, 2005, The Burlington Northern And Santa Fe Railway Company changed its name to BNSF Railway Company.

In order to accommodate the requested substitution, the Board must vacate the extant NITU and issue a new NITU on behalf of Montoff. See STB Docket No. AB-103 (Sub-No. 9X), *The Kansas City Southern Railway Company – Abandonment Exemption – In Jasper county, MO and Cherokee County, KS* (not printed), served June 17, 1997 (abandoning carrier consented to the substitution); STB Docket No. AB-55 (Sub-No. 588X), *CSX Transportation, Inc. – Abandonment Exemption – In Polk and McMinn Counties, TN* (not printed), served November 4, 2002 (abandoning carrier and new trail manager reached an agreement for interim trail use/rail banking). Here, Montoff claims to have reached an agreement with ODOT without BNSF’s prior knowledge or consent and Montoff has not sought, much less entered into, an agreement with BNSF for future interim trail use/rail banking which would be required under the Trails Act.

The Board generally defers to the abandoning railroad to determine whether a prospective manager is financially responsible. See STB Docket No. AB-433 (Sub-No. 2X), *Idaho Northern & Pacific Railroad Company – Abandonment and Discontinuance Exemption – In Washington and Adams Counties, ID* (not printed), served April 1, 1998. Unless the prior permission of the abandoning railroad is required for a substitution, the railroad would have no opportunity to assess the financial responsibility of the proposed substituted manager. The Motion provides no evidence as to the identity of Montoff much less its financial fitness. Nor has Montoff provided any information to BNSF. Consequently, neither the Board nor BNSF are able to determine whether Montoff is a “qualified” entity within the meaning of the Trails Act.

Second, neither Montoff nor ODOT have provided BNSF any assurances that BNSF’s retained right to repurchase track materials would not be adversely affected by the arrangement between Montoff and ODOT. Indeed, it appears that the Montoff-ODOT arrangement is in

violation of the Trail Agreement. BNSF is thus concerned that its retained contractual right to repurchase the track materials may be jeopardized by Montoff's arrangement with ODOT.

In summary, the Motion is at best premature. The Board should reject or deny the Motion and require Montoff first to obtain the consent of BNSF. If such consent is obtained, Montoff and ODOT can refile their Motion. If BNSF withholds its consent, any future Motion by Montoff should be summarily rejected or denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive style and is positioned above a horizontal line.

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Attorneys for:
BNSF Railway Company

Dated September 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served by U.S. Mail, first class, postage pre-paid, this 3rd day of September, 2009 upon counsel for Montoff Transportation LLC and the Oklahoma Department of Transportation.



Karl Morell