

Freeborn & Peters LLP

January 5, 2005

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



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/

Attorneys at Law

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Suite 3000
Chicago, Illinois
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**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 434X);
The BNSF Railway Company Abandonment of Moore, Montana to
Lewiston, Montana**

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Dear Secretary Williams:

In reply to the City Lewistown's letter dated December 21, 2005, BNSF does not object to the issuance of a Notice of Interim Trails Use.

Sincerely,

Michael A. Smith

Chicago

Springfield

Enclosures

ENTERED
Office of Proceedings

P-1

BRAD PARRISH
LARRY PHILLIPS
First Ward Commissioners

DARRYL MCKENZIE
PATTY TURK
Second Ward Commissioners

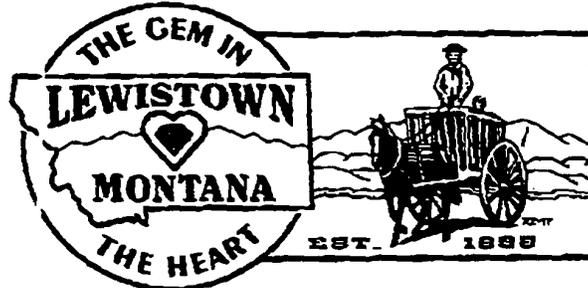
RICK POSS
GARY LANDERS
Third Ward Commissioners

DAVE SATHER JR.
At-Large Commissioner

KEVIN MYHRE
City Manager

MONTE BOETTGER
City Attorney

CITY OF LEWISTOWN



305 Watson, Lewistown, Montana 59457
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December 21, 2005



NIKKI BRUMMOND
Financial Officer

JIM DANIELS
Park and Recreation
Director

KEVIN MYHRE
Chief of Police

WILLIAM D. RASH JR.
Fire Chief

LEO KAPP
Director of Public Works

BRIDGETT JOHNSON
Library Director

DUANE FERDINAND
Planning Director

Secretary
Surface Transportation Board
1925 K. Street, NW
Washington, DC 20423-0001

Re: BNSF Railway Company Abandonment Exemption in Fergus County, Montana, STB
Docket Number AB-6 (Sub-No. 434 X).

Dear Secretary:

This comment should be treated as a protest or a petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of the City of Lewistown, Montana, which is a political subdivision of Fergus County and a government agency interested in transportation and/or recreation, which is hereinafter referred to as "Commenter."

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between milepost 9.50 near Moore, MT and milepost 28.35 near Lewistown, 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, Montana.

A. Public Use Condition

Commenter requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on abandonment.

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms. The justification for this condition is: a) the community desires that the corridor remain intact for the possibility of future transportation use; b) the property is essential for a future utility corridor; and c) that the corridor

is suitable as a connecting route to schools, neighborhoods and the downtown commercial core and would make an excellent recreational trail. The conversion of the property to trail use is in accordance with local plans. The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs this amount of time to assemble and review title information, complete trail and utility plans and to commence negotiations with the carrier.

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section 8(d) of the National Trails system Act, 16 U.S.C, 1247 (d), and 49 C.F.R., 1152.29, the City of Lewistown is willing to indemnify the railroad company against any potential liability, assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by the BNSF Railway Company.

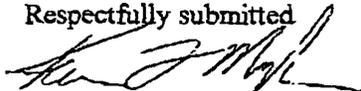
The property, known as the BNSF Railway Corridor, extends between milepost 9.50 near Moore, MT and milepost 28.35 near Lewistown, MT, the 1.30-mile Berg Lumber Spur (milepost 0.00 – milepost 1.30), and the Heath Spur (milepost 0.00 – milepost 1.10), a total distance of 21.25 miles located in Fergus County, Montana. The right-of-way is part of a line of railroad proposed for abandonment in STE Docket No. AB-6 (Sub-No. 434X).

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

The City of Lewistown 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.

By my signature below, I certify service upon The BNSF Railway Company's Representative Michael Smith, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606-6677, by US Mail, postage pre-paid, first class, this 21st day of December 21, 2005.

Respectfully submitted



Name: Kevin Myhre, City Manager
On behalf of the City of Lewistown, MT

