

SURFACE TRANSPORTATION BOARD ANNOUNCES FAVORABLE APPEALS COURT RULING IN CASES INVOLVING REOPENING OF BURLINGTON NORTHERN'S "STAMPEDE PASS" RAIL LINE IN WASHINGTON STATE

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the Ninth Circuit has issued a decision affirming in all respects the Board's handling of preemption and environmental issues associated with the reopening of the Burlington Northern and Santa Fe Railway Company's (BN's) Stampede Pass line in the State of Washington.

Stampede Pass was one of three main lines serving the Seattle-Tacoma area that were historically owned and operated by BN. In the mid-1980s, as BN and other large railroads rationalized their systems by eliminating track that was deemed to constitute excess capacity, a portion of the Stampede Pass line was sold to the Washington Central Railroad (WC). By the mid-1990s, however, the railroad industry in general, and BN in particular, had begun to expand their infrastructure to meet growing shipper demands. As part of that expansion, BN sought Board approval to reacquire the portion of the Stampede Pass line that had been sold to WC.

To facilitate service over its reacquired track, BN proposed various repairs and improvements, some of which raised environmental issues. Certain municipal interests argued that these environmental issues had to be addressed through the local permitting process, while BN argued that local environmental review was preempted by federal regulation. Finding that federal law preempts state and local permitting requirements, the Board approved BN's proposal, concluding that, with certain mitigation measures, BN's projects would not have a significant environmental impact. The municipal interests sought judicial review.

In its decision, the court found that the ICC Termination Act of 1995 broadly preempts state and local permitting laws regarding railroad operations. Insofar as this case is concerned, the court upheld in all respects the environmental review process that the Board undertook, holding that the environmental assessment (EA) prepared by the agency to meet its obligations under the National Environmental Policy Act reflected a thorough, independent investigation of the environmental consequences of the reacquisition and reactivation of the Stampede Pass line. In particular, the court determined, the affected cities were given ample opportunity to raise environmental concerns; the specific environmental mitigation conditions developed by the Board were adequate; and the parameters of the EA were appropriate.

The Ninth Circuit's decision was issued in *City of Auburn v. STB*, Nos. 96-71051, 97-70022, and 97-70920 (9th Cir. Sept. 3, 1998). The Board decisions under review were issued in *King County, WA—Pet. For Declaratory Order—Burlington N.R.R.—Stampede Pass Line*, STB Finance Docket No. 33095 (Sept. 25, 1996), *clarified, Auburn & Kent, WA—Pet. For Declaratory Order—Burlington N.R.R.—Stampede Pass Line*, STB Finance Docket No. 33200 (July 2, 1997); and *Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp. And Burlington Northern Railroad Company—Control—Washington Central Railroad Company*, STB Finance Docket No. 32974 (Oct. 25, 1996). The Board's decisions are available on the Board's web site at www.stb.dot.gov.

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