

SURFACE TRANSPORTATION BOARD ANNOUNCES THAT SUPREME COURT WILL LET STAND 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 that the Supreme Court has denied the petition seeking Supreme Court review of the decision of the United States Court of Appeals for the Ninth Circuit affirming in all respects the Board's handling of preemption and environmental issues associated with the Burlington Northern and Santa Fe Railway Company's (BN) "Stampede Pass" rail line in the State of Washington. This means that the Ninth Circuit's decision, issued September 3, 1998, will stand.

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 its infrastructure to meet growing shipper demand. As part of that expansion, BN had 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 had proposed various repairs and improvements, some of which raised environmental issues. Certain municipal interests had argued that these environmental issues had to be addressed through the local permitting process, while BN had 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 the Ninth Circuit.

In its decision, the Ninth Circuit found that the ICC Termination Act of 1995 broadly preempts state and local permitting laws regarding railroad operations. In addition, the court upheld in all respects the environmental review process that the Board undertook regarding the reopening of the Stampede Pass line. After the Ninth Circuit issued its decision, the City of Auburn (Auburn) filed a petition for rehearing and a suggestion for rehearing *en banc*, which the Ninth Circuit denied on December 22, 1998. Auburn then filed its petition seeking review by the Supreme Court. The Court denied that petition on June 21, 1999.

The Supreme Court's decision was issued in *City of Auburn v. United States*, No. 98-1511 (Supreme Court June 21, 1999). The Ninth Circuit's decision was issued in *City of Auburn v. STB*, 154 F.3d 1025 (9th Cir. 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).

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