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SERVICE DATE - AUGUST 18, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 412X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN PONCA CITY, KAY COUNTY, OK

Decided: August 17, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 4.14-mile line of railroad between BNSF milepost 138.00 and milepost 142.14 in Ponca City, Kay County, OK. Notice of the exemption was served and published in the Federal Register on May 28, 2004 (69 FR 30746-47). The exemption became effective on June 29, 2004.¹

On July 19, 2004, the City of Ponca City, OK (the City), late-filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29 for a 1-mile portion of the line segment extending from Union Street to Waverly Street. The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. In a response filed on July 22, 2004, BNSF indicated its willingness to negotiate with the City.²

¹ By decision served on June 28, 2004, the proceeding was reopened and the exemption was made subject to the condition that BNSF provide the National Geodetic Survey with 90 days' notice before beginning any salvage activities to plan for the relocation of three geodetic station markers that may be affected by the abandonment.

² The May 28, 2004 notice provided that trail use/rail banking requests were due by June 7, 2004. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 900 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. The late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the notice served and published in the Federal Register on May 28, 2004, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the service date of this decision and notice (until February 14, 2005), and subject to the condition imposed in the June 28, 2004 decision.
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 of (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. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. 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.
7. If an agreement for interim trail use/rail banking is reached by February 14, 2005, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided that the environmental condition imposed in the June 28, 2004 decision is met.

8. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary