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SERVICE DATE - OCTOBER 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT
STB Docket No. AB-6 (Sub-No. 379X)

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

Decided: October 23, 1998

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--~~Exempt Abandonments~~ to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. Notice of the exemption was served and published in the Federal Register on May 6, 1998 (63 FR 25132-33). The exemption was scheduled to become effective on June 5, 1998, provided no formal expression of intent to file an offer of financial assistance (OFA) was filed.

By petition filed May 18, 1998, the Oklahoma Department of Transportation (ODOT) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. By letter dated June 1, 1998, BNSF indicated its agreement to a trail use condition.

Also on May 18, 1998, the Oklahoma Department of Transportation (ODOT) timely filed a notice of intent to file an offer of financial assistance (OFA). The filing of the notice of intent automatically stayed the effective date of the exemption until June 15, 1998. By decision served June 2, 1998, the Board held the requests for issuance of a notice of interim trail use and for issuance of a public use condition in abeyance pending completion of the OFA process.¹ On June 5, 1998, BNSF filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to permit it to develop and submit the required information/and or otherwise complete voluntary negotiations for the transfer of the line. BNSF stated that it had provided some data to ODOT, but had not provided all of the requested information in view of time constraints and ongoing negotiations. ODOT did not object and supported the extension.

On August 6, 1998, ODOT filed a notice of intent to proceed with interim trail use and rail banking under 49 CFR 1152.29(d). ODOT states that, in the event that the parties are unable to reach an agreement under a NITU by September 1, 1998, it would like the Board to issue a

¹ The June 2, 1998 decision also imposed an environmental condition requiring that BNSF, while conducting salvage activities, not store rail, ties, or salvage equipment in the 100-year floodplain.

procedural schedule for filing an OFA under 49 CFR 1152.27(c). ODOT stated that BNSF had not provided all of the information that it requested under 49 CFR 1152.27(a) to file an OFA. By letter filed August 7, 1998, BNSF stated that it and ODOT had reached an agreement in principle on the terms of a transfer of the right-of-way and anticipate executing an interim trail use/rail banking agreement in the near future. BNSF also concurred in the request for relief by ODOT. By decision served August 14, 1998, the proceeding was reopened and the request for issuance of a notice of interim trail use was held in abeyance and BNSF and ODOT were given the opportunity to negotiate an interim trail use/rail banking agreement for the right-of-way. In the same decision, BNSF was directed to provide ODOT with the requested information to enable ODOT to file an OFA. The time period for ODOT to file its OFA was extended to October 1, 1998, and the effective date of the exemption was postponed until October 11, 1998.

By facsimile submission received on September 29, 1998, ODOT filed for an extension of the OFA period until October 20, 1998. ODOT stated that BNSF had consented to the extension request. By decision served October 1, 1998, the time for filing an OFA was tolled until October 20, 1998, and the effective date of the exemption was postponed until October 30, 1998.

On October 22, 1998, ODOT submitted a letter stating that it and BNSF have reached an agreement with respect to trail use/rail banking and are circulating the documentation for signature. ODOT states that, based on the assumption that the document will be signed, it no longer intends to file an OFA and requests that the Board issue a notice of interim trail use. ODOT also states that BNSF concurs in the request.²

The Board in its June 2 decision held the request for issuance of a notice of interim trail use in abeyance pending completion of the OFA process. With the termination of the OFA process, it is now appropriate to issue a notice of interim trail use or abandonment and to impose a public use condition.

This decision will not significantly affect either the quality of the human environment or the conservation of the energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on May 6, 1998, exempting the abandonment of the line described above is modified to the

² ODOT states that the agreement between it and BNSF provides that closing will not occur until after the NITU is issued.

extent necessary to implement interim trail use/rail banking as set forth below, subject to the condition that BNSF keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the effective date of this decision (in this case the service date of this decision) to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

3. The decision served on August 14, 1998, is vacated and a Notice of Interim Trail Use/rail banking is issued for the line between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK.

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 (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. 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.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision (April 25, 1999), interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line.

7. Subject to the public use and trail use provisions above, BNSF's abandonment exemption will become effective on the service date of this decision.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary