

SERVICE DATE – MAY 10, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND AMENDED NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 403X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN SEDGWICK
COUNTY, KS¹

Decided: May 9, 2005

The Burlington Northern and Santa Fe Railway Company, now BNSF Railway Company (BNSF), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its line of railroad, between milepost 494.22 and milepost 505.20 in and near Wichita, KS, and from milepost 515.23 to milepost 509.30 between Wichita and Valley Center, in Sedgwick County, KS, a total distance of 16.91 miles. Notice of the exemption was served and published in the Federal Register on March 24, 2003 (68 FR 14272).

By decision and notice of interim trail use or abandonment (NITU) served on April 22, 2003 (April 2003 decision), the proceeding was reopened and a 180-day period was authorized for the City of Wichita (the City) to negotiate an interim trail use/rail banking agreement with BNSF for a 9.78-mile segment of the right-of-way extending from milepost 494.22 at the Butler County/Sedgwick County line, westward to milepost 504.00 near Hydraulic Street, in downtown Wichita.² The negotiating period was extended by decisions served on October 2, 2003, March 29, 2004 (March 2004 decision),³ and October 7, 2004 (October 2004 decision).⁴

By letter filed on April 11, 2005, BNSF notified the Board that BNSF and the City have entered into an interim trail use/rail banking agreement dated March 24, 2005, for the portion of the line between milepost 494.22 and milepost 504.05. BNSF states that the agreement covers an additional 0.05 miles and requests modification of the NITU issued in the Board's April 2003 decision to reflect that the NITU covers the portion of the line between milepost 494.22 and milepost 504.05. On April 13, 2005, the City requested that the Board allow it to extend its

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

² The April 2003 decision also imposed several environmental conditions.

³ In the March 2004 decision, the consummation notice filing deadline was extended until December 31, 2004. By decision served on December 30, 2004, the deadline for BNSF to file its notice of consummation was further extended up to and including December 31, 2005.

⁴ The October 2004 decision extended the interim trail use negotiating period for the 9.78-mile segment until April 11, 2005.

statement of willingness to assume financial responsibility to include the additional segment. The City has 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 has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. The City's request complies with the requirements of 49 CFR 1152.29 and the parties have entered into a trail use agreement for the portion of the line from milepost 494.22 to milepost 504.05. Accordingly, the request that the City be allowed to modify the NITU served on April 22, 2003, to include the portion of the line from milepost 504.00 to milepost 504.05 will be granted.

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

It is ordered:

1. BNSF's request to modify the NITU is granted.
2. The City's request that it be allowed to extend its statement of willingness to assume financial responsibility for the portion of the line from milepost 504.00 to milepost 504.05 is granted.
3. The NITU served in this proceeding on April 22, 2003, is amended to the extent necessary to implement interim trail use/rail banking for that portion of the right-of-way from milepost 504.00 to milepost 504.05.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary