

33494
DO

SERVICE DATE - LATE RELEASE APRIL 22, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION—IN SEDGWICK COUNTY, KS

Decided: April 22, 2003

The Burlington Northern and Santa Fe 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). The exemption is scheduled to become effective on April 23, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 28, 2003. In the EA, SEA recommends that the following conditions be imposed on any decision granting abandonment authority. The first condition requires that, once abandonment plans are finalized and prior to the commencement of abandonment activities, BNSF shall consult with the Kansas Department of Health and Environment - Bureau of Water on the need to file a Notice of Intent for construction stormwater discharges under section 402 of the Clean Water Act, the disposal requirements for removal of any railroad ties, and the need to prepare and submit a water pollution control plan and to report the results of this consultation to the Board. The second condition requires that, once abandonment plans are finalized and prior to the commencement of abandonment activities, BNSF shall consult with the Kansas Department of Agriculture - Division of Water Resources on the need for a state permit for activities within a stream or watercourse and to report the results of this consultation to the Board. The third condition, which addresses the concerns raised by the Kansas Department of Wildlife and Parks, requires that BNSF shall reseed any vegetation impacted by abandonment activities with native grasses and forbs and implement erosion control measures, as needed. Comments to the EA were due by April 11, 2003. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On March 26, 2003, the City of Wichita (the City) filed a request for issuance of a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, 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. 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. In a response submitted on March 28, 2003, BNSF states that it supports the issuance of a NITU.

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate with the City for the 9.78-mile line segment, 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 relevant portion of the line, provided the environmental conditions imposed in this decision are met. 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. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on March 24, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for the portion of the line from milepost 494.22 at the Butler County/Sedgwick County line, to milepost 504.00 near Hydraulic Street, for a period of 180 days from the service date of this decision and notice (until October 19, 2003), and subject to the conditions that: (1) once abandonment plans are finalized and prior to commencement of abandonment activities, BNSF shall consult with the Kansas Department of Health and Environment - Bureau of Water on the need to file a Notice of Intent for construction stormwater discharges under section 402 of the Clean Water Act, the disposal requirements for removal of any railroad ties, and the need to prepare and submit a water pollution control plan and to report the results of this consultation to the Board; (2) once abandonment plans are finalized and prior to commencement of abandonment activities, BNSF shall consult with the Kansas Department of Agriculture - Division of Water Resources on the need for a state permit for activities within a stream or watercourse and to report the results of this consultation to the Board; and (3) that BNSF shall reseed any vegetation impacted by abandonment activities with native grasses and forbs and implement erosion control measures, as needed.

3. If an interim trail use/rail banking agreement is reached for the above-described 9.78-mile line segment, 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.

4. 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.

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 October 19, 2003, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the relevant portion of the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary