

January 28, 2019

247049

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 East Street, SW
Washington D.C. 20423- 0001

ENTERED
Office of Proceedings
February 1, 2019
Part of
Public Record

Re: BNSF Abandonment in City of Kalispell, Flathead County, Montana, Docket No. AB 6
(Sub-No. 495X)

Dear Ms. Brown:

The City of Kalispell, Montana currently holds an Interim Trail Use Permit issued by the Surface Transportation Board and identified in the subject line of this correspondence. This permit is for that portion of Burlington Northern Santa Fe rail line that runs through the City from Milepost 1225.19 to Milepost 1226.79. The City is in agreement with the letter request of BNSF dated August 6, 2018 to extend the NITU and consummation deadline until July 27, 2019.

Since the issuance and extension of the permit, the matters to be addressed by the City and BNSF have progressed well. The City has conducted its due diligence of environmental assessment prior to acquisition. The parties are negotiating the terms of the acquisition.

The City further requests a waiver of the Board's filing fees in accordance with 49 CFR 1002(e)(1) as the City is a local government entity. Thank you for your consideration.

Charlie

Charles A. Harball
City Attorney
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(406) 758-7709 charball@kalispell.com

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FILING FEE WAIVED

SERVICE DATE – MARCH 22, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 495X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN FLATHEAD
COUNTY, MONTANA

Decided: March 21, 2018

BNSF Railway Company (BNSF) filed a petition seeking an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to abandon a 2.7-mile rail line extending from milepost 1225.19 to the south end of the line at milepost 1227.58 and to the west end of the line at Engineering Station 189+36 (milepost 1227.10), in Kalispell, Flathead County, Mont. (the Line). Notice of the exemption was served and published in the Federal Register on May 16, 2017 (82 Fed. Reg. 22,603).

By decision and notice of interim trail use or abandonment (NITU) served on August 14, 2017, the Board allowed BNSF to end its common carrier obligation, subject to conditions. As explained in that decision, BNSF agreed to negotiate with the City of Kalispell (the City) for trail use and public use. On February 26, 2017, the City filed a request asking that the NITU period be extended an additional 180 to 365 days. The City indicates that the extension is needed to complete acquisition work. BNSF does not object to the City's request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the Board retains jurisdiction and may extend the NITU negotiating periods. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). Under the circumstances, further extension of the negotiating periods is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). The Board will grant the City's request for a one-year extension, to February 10, 2019. See, e.g., CSX Transp.—Aban. Exemption—in Jefferson Cty., Ala., AB 55 (Sub-No. 613X) (STB served Mar. 5, 2015) (granting a one-year extension).

It is ordered:

1. This proceeding is reopened.
2. The previously granted exemption is modified to the extent necessary to permit the City to continue to negotiate with BNSF for interim trail use/rail banking for Line until February 10, 2019. The exemption also continues to be subject to the conditions imposed in the Board's August 14, 2017 decision.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the relevant parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, 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 10, 2019, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, BNSF may fully abandon the Line, subject to any outstanding conditions.

8. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Karl Morell & Associates
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Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

August 6, 2018

E-Filed

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Docket No. AB 6 (Sub-No. 495X), BNSF Railway Company --
Abandonment Exemption -- in Flathead County, Montana

Dear Ms. Brown:

BNSF Railway Company hereby seeks an extension of the consummation deadline until July 27, 2019, for the portion of the line between Milepost 1226.79 and Mileposts 1227.10 and 1227.58. The portion of the line between Milepost 1225.19 and Milepost 1226.79 is the subject of an outstanding NITU.

If you have any questions, please call me.

Sincerely,



Karl Morell

cc: Mark D. Lalum

Doug Russell

By my signature below, I hereby certify that a copy of the City of Kalispell's Request for Extension of Time was served on all parties of record by electronic and U.S. Mail as follows:

Via email on January 28, 2019 and via U.S. Mail, postage pre-paid, first class on February 1, 2019:

Karl Morell
Counsel for BNSF
655 15th Street NW, Suite 225
Washington, D.C. 20005
karlm@karlmorell.com

Via email and via U.S. Mail, postage pre-paid, first class on February 1, 2019:

Mark D. Lalum,
CHS Inc.
P.O. Box 579,
150 1st Avenue WN
Kalispell, MT 59903
mark.lalum@chsinc.com

Submitted,

Katharine (Thompson) King, MPA, CEcD

Assistant Director
Community and Economic Development
City of Kalispell
406.758.7713

Please note that my name and email have changed. Katharine King now at KKing@Kalispell.com.