

SERVICE DATE – MAY 8, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 442X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BOULDER
COUNTY, CO

Decided: May 4, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.13-mile line of railroad extending between milepost 36.72 and milepost 35.59, near Longmont, in Boulder County, CO. Notice of the exemption was served and published in the Federal Register on August 31, 2006 (71 FR 51886). The exemption became effective on September 30, 2006.¹ By decision and notice of interim trail use or abandonment (NITU) served on October 26, 2006, the proceeding was reopened and the City of Longmont, CO (the City), was authorized to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The negotiating period under the NITU expired on April 24, 2007.

On April 24, 2007, the City filed a request to extend the NITU negotiating period for an additional 60 days. The City states that the parties have been working towards a resolution, but more time is needed to complete and execute an agreement. In a response filed that same date, BNSF states that it supports the City's request to extend the negotiating period for an additional 60 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board

¹ By decision served on September 28, 2006, the proceeding was reopened and the exemption was made subject to the conditions that BNSF: (1) notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station marker identified by NGS; and (2) consult with the U.S. Fish and Wildlife Service prior to beginning salvage activities regarding its recommendations for conducting habitat assessments, trapping studies, or provide other recommendations pursuant to the provisions of the Endangered Species Act, and report the results of these consultations to the Board's Section of Environmental Analysis in writing. The environmental conditions remain in effect.

retains jurisdiction, and the NITU negotiating period may be extended.² Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 60 days from April 24, 2007, until June 23, 2007.

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to June 23, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).