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SERVICE DATE – NOVEMBER 6, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 494X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN LARIMER COUNTY, COLO.

Decided: November 5, 2018

On October 10, 2017, BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 0.5 miles of rail line, between milepost 74.5 and milepost 75.0, in Fort Collins, Larimer County, Colo. (the Line). Notice of the exemption was served and published in the Federal Register on October 30, 2017 (82 Fed. Reg. 50,220). By decision served on November 28, 2017, the proceeding was reopened, and the exemption was made subject to an historic preservation condition and a public use condition.¹

On October 11, 2018, BNSF submitted a request to extend the consummation deadline until October 30, 2019. On October 15, 2018, the National Association of Reversionary Property Owners (NARPO) filed a letter that, among other things, objects to the extension of the consummation deadline by asserting that the Line has already been abandoned. NARPO argues that over 25 years ago the tracks were removed from the Line and tariffs were cancelled. NARPO also states that at milepost 75.0 the Line connects to a portion of rail line that is railbanked pursuant to Section 8(d) of the National Trail System Act, 16 U.S.C. § 1247(d). See BNSF Ry.—Aban. Exemption—Between Fort Collins & LaPorte, in Larimer Cty., Colo., AB 6 (Sub-No. 306X) (STB served Dec. 28, 2015) (issuing a replacement notice of interim trail use (NITU)). NARPO also argues that the NITU in that docket should be vacated as, not only is the segment isolated, but its right-of-way also runs through the City of Fort Collins utility facility. On October 26, 2018, BNSF filed a reply to NARPO's letter, and NARPO replied to BNSF's letter on October 29, 2018.

Regarding BNSF's request for an extension of the consummation deadline, the historic preservation condition imposed in the November 28, 2017 decision is a regulatory barrier to consummation, as BSNF notes in its October 26 letter. Accordingly, BNSF cannot consummate the abandonment until the historic preservation process under Section 106 of the National Historic Preservation Act has been completed and the historic preservation condition has been removed. Where, as here, there is a legal or regulatory barrier to consummation that exists at the end of the one-year time period in the Board's regulations, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal regulatory

¹ The public use condition expired on May 28, 2018.

barrier. 49 C.F.R. § 1152.29(e)(2). Because BNSF has until 60 days after the Section 106 historic preservation condition is removed to file its notice of consummation, its extension request is unnecessary at this time and will be dismissed as moot.

NARPO's argument that the Line already has been abandoned is incorrect. Since 1997 railroads have been required to demonstrate their intent to consummate abandonment authority by filing a notice of consummation with the Board signifying that the railroad has exercised its authority to abandon and intends the property to be removed from the national rail transportation network. See ABE Fairmont, LLC—Aban. Exemption—in Fillmore Cty., Neb., AB 1106X et al., slip op. at 4 (STB served Jan. 29, 2018); Honey Creek R.R.—Pet. for Declaratory Order, FD 34869 et al., slip op. at 4 (STB served June 4, 2008); Aban. & Discontinuance of Rail Lines, 1 S.T.B. 894-95, 904-05 (1996). Unless and until a timely notice of consummation is filed by BNSF, the Line remains within the Board's jurisdiction.²

It is ordered:

1. BNSF's request for an extension of time to exercise abandonment authority is dismissed as moot.
2. This decision is effective on its service date.

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

² NARPO's arguments concerning the connecting rail line in Docket No. AB 6 (Sub-No. 306X) will not be addressed as that is not the docket at issue here.