

SERVICE DATE – MARCH 22, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 497X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN BENTON COUNTY, MINN.

Decided: March 21, 2018

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 1.75-mile line of railroad located between milepost 0.0 and milepost 1.75 in Benton County, Minn. (the Line).¹ Notice of the exemption was served and published in the Federal Register on December 8, 2017 (82 Fed. Reg. 58,045). The exemption became effective on January 9, 2018.

On February 16, 2018, Benton County, Minn. (the County) late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with BNSF for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.² Pursuant to 49 C.F.R. § 1152.29, the County has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on March 8, 2018, BNSF notified the Board that it does not object to the requested issuance of a NITU.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within 180 days, BNSF may fully abandon the Line, subject to

¹ The Board's authorization was subject to employee protective conditions and one environmental condition, which remain in effect.

² Requests for interim trail use/rail banking were to be filed by December 18, 2017. See BNSF Ry.—Aban. Exemption—in Benton Cty., Minn., AB 6 (Sub-No. 497X) (STB served Dec. 8, 2017). However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted.

any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The County also late-filed a request for imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The County asks that BNSF be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The County's justification for its request is that this corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. According to the County, a 180-day period is needed to assemble and review title information and to negotiate with BNSF.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the County has satisfied these requirements, a 180-day public use condition will be imposed, requiring BNSF to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from January 9, 2018, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on July 8, 2018, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until September 18, 2018. If a trail use agreement is reached for a portion of the right-of-way prior to September 18, 2018, BNSF must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, BNSF is not required to deal exclusively with the County but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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. The County's late-filed requests for a NITU under 16 U.S.C. § 1247(d) and a public use condition under 49 U.S.C. § 10905 are accepted and granted.
3. Upon reconsideration, the notice served and published in the Federal Register on December 8, 2017, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the County to negotiate with BNSF for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until September 18, 2018, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until July 8, 2018.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, BNSF may discontinue service. BNSF shall keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the exemption, until July 8, 2018, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
5. 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.
6. 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 5 above.
7. If an interim trail use agreement is reached (and thus, interim trail use is established), the 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).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by September 18, 2018, for the right-of-way, interim trail use may be implemented. If no agreement is reached, BNSF may fully abandon the Line, subject to any outstanding conditions.

10. This decision and notice is effective on its service date.

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