

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.