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SERVICE DATE - JUNE 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN GARFIELD AND LOGAN COUNTIES, OK

Decided: June 1, 1998

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. Notice of the exemption was served and published in the Federal Register on May 6, 1998 (63 FR 25132-33).

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 13, 1998. In the EA, SEA states that the Logan County Conservation District and Floodplain Management Board has indicated that, if BNSF removes rails and ties during salvage activities, these materials, and the heavy equipment used to remove them, must not be stored within the boundaries of the 100-year floodplain. Therefore, SEA recommends that BNSF during salvage activities, shall not store rails, ties, or salvage equipment in the 100-year floodplain.

The exemption was scheduled to become effective on June 5, 1998, but a formal expression of intent to file an offer of financial assistance (OFA) has been filed by the Oklahoma Department of Transportation (ODOT) to purchase the entire line, which has the effect of staying the effective date of exemption for 10 days until June 15, 1998.¹

Also, on May 18, 1998, and May 26, 1998, ODOT filed a request for a issuance of a notice of interim trail use (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail.

ODOT requests that BNSF be barred from removing or destroying any trail-related structures, such as track, ties, and signal equipment, as well as bridges and other rail facilities, for a 180-day period from the effective date of abandonment exemption. ODOT states that it needs the full 180-day period to complete necessary contractual arrangements and obtain necessary governmental authorization. ODOT submitted a statement of willingness to assume financial

¹ 49 CFR 1152.27(c)(2)(i).

responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply dated June 1, 1998, BNSF indicated its willingness to negotiate with ODOT for interim trail use.

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 Abandonments--Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 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. See 49 CFR 1152.28(a)(2). ODOT has satisfied the requirements for both a public use condition and a NITU and, therefore, imposition of both would be appropriate, commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision and notice of interim trail use will be issued.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the condition that BNSF, while conducting salvage activities, shall not store rail, ties, or salvage equipment in the 100-year floodplain.
3. If the OFA process terminates, a decision effective on its service date will be issued to impose the notice of interim trail use and the public use condition.
4. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.
5. The effective date of the exemption is postponed until June 15, 1998.

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6. This decision is effective on its service date.

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

Vernon A. Williams
Secretary