

SERVICE DATE – MAY 1, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 493X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN COOK COUNTY, ILL.

Decided: April 28, 2017

By decision served on August 19, 2016, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by BNSF Railway Company (BNSF) of an approximately 0.89-mile rail line on BNSF's Lumber District Lead beginning just west of Laflin Street at Engineering Station 118+00 and proceeding east along West Cermak Road to the most easterly point at Engineering Station 157+65 and heading north along the Sangamon Street Lead at Engineering Station 163+50, including both legs of the wye, in Chicago, Cook County, Ill. (the Line).¹ Notice of the exemption was served and published in the Federal Register on May 23, 2016 (81 Fed. Reg. 32,381). The exemption became effective on September 18, 2016.

By decision and notice of interim trail use or abandonment (NITU) served on November 23, 2016 (November 2016 decision), the proceeding was reopened and a 180-day period, from November 23, 2016 (the service date of the decision and notice) until May 22, 2017, was authorized for the City of Chicago, acting by and through its Department of Transportation (the City), 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 C.F.R. §1152.29. The November 2016 decision also authorized a 180-day period for the City to negotiate with BNSF for a public use condition under 49 U.S.C. § 10905 for the Line commencing from September 18, 2016, the effective date of the exemption, until March 17, 2017.

In a letter filed on March 3, 2017, the City petitions the Board to extend the NITU negotiating period for an additional 114 days and the public use negotiation period for an additional 180 days. The City states that additional time is needed to continue negotiations, complete due diligence for title and environmental conditions, and to secure funds for trail

¹ The Board's authorization was subject to employee protective conditions and three environmental conditions. One environmental condition, requiring consultation with the U.S. Fish and Wildlife Service (USFWS) regarding potential impacts to any federally listed, endangered, threatened, or candidate species that may occur in the vicinity of the right-of-way, was removed by a decision served on November 1, 2016. The other two environmental conditions remain in effect.

development. In a response filed on April 4, 2017, BNSF states that it has not consummated the abandonment of the Line and does not object to the requested extension of the NITU.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for the Line and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period 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). An extension of the NITU negotiation period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period for the Line will be extended for an additional 114 days from May 22, 2017, until September 13, 2017. 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) and (h).

The City's request to extend the public use condition, however, will be denied. The public use condition, which is limited by statute to 180 days, expired on March 17, 2017, and may not be extended. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28(b); and Rail Abans.—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-98 (1992).

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

It is ordered:

1. The City's request to extend the NITU negotiating period for an additional 114 days is granted.
2. The NITU negotiating period is extended from May 22, 2017, to September 13, 2017.
3. The City's request to extend the public use condition is denied.
4. If an agreement for interim trail use/rail banking is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).