

conditions.<sup>4</sup> Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*It is ordered:*

1. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

2. If an interim trail use/rail banking agreement is reached, then with respect to the right-of-way, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify BN from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to

meet the financial obligations for the right-of-way.

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, BN may fully abandon the line.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective on April 21, 1995.

Decided: March 15, 1995.

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

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 95-6896 Filed 3-21-95; 8:45 am]

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**[Docket No. AB-6 (Sub-No. 364X)]**

**Burlington Northern Railroad Company; Abandonment Exemption— in Snohomish County, WA; Exemption and Notice of Interim Trail Use or Abandonment**

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its 2.69-mile line of railroad between BN milepost 6.92 and BN milepost 8.19, and the 1.42-mile Cascade Pole Spur in and near Arlington, in Snohomish County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

*Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 21, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by April 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

The Snohomish County Parks and Recreation Department (SCPRD) requests issuance of a notice of interim trail use/rail banking (NITU) for the involved line under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). SCPRD has submitted a statement of willingness to assume financial responsibility for the interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. BN consents to this request and is willing to negotiate with SCPRD.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the

<sup>1</sup> A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request prior to the effective date of this exemption.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

<sup>4</sup> The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by our adoption of rules allowing OFAs in these exemption proceedings. See 49 CFR 1152.27.

criteria for imposing trail use/rail banking have been met. Accordingly, based on BN's willingness to enter into negotiations with SCPRD, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, BN may fully abandon the line. See 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude BN from negotiating with other parties in addition to SCPRD during the NITU negotiating period. If additional trail use requests are filed, BN is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.<sup>4</sup> Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SCPRD also requested a 180-day public use condition under 49 U.S.C. 10906 as an alternative to interim trail use. When the need for both conditions is established, it is Commission policy to impose them concurrently, subject to the execution of a trail use agreement. See *Trails, supra* at 609. SCPRD's submission meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (a) The condition sought; (b) the public importance of the condition; (c) the time period for which the condition would be effective; and (d) justification for imposition of the time period.

<sup>4</sup>The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by the adoption of rules allowing OFAs in these exemption proceedings. See 49 CFR 1152.27.

Accordingly, the requested 180-day public use condition will also be imposed. If a trail use agreement is reached for a portion of the right-of-way, BN must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. 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 either the whole or a portion of a right-of-way that has been found suitable for public purposes, including trail use.

BN has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*It is ordered:*

1. The abandonment of the above described line is subject to the conditions: (1) That BN is prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, unless for public use on reasonable terms; and (2) that BN keep intact the right-of-way underlying the track, including all of the trail related structures including bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of this exemption, to enable any State or local government agency or other interested persons to negotiate the acquisition of the line for public use.

2. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any liability arising out of the transfer or use of (unless the user is immune from liability, in which

case it need only indemnify BN from any potential liability), and for 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this notice of exemption and NITU, interim trail use may be implemented. If no agreement is reached by that time, BN may fully abandon the line.

Decided: March 16, 1995.

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

**Vernon A. Williams,**  
*Secretary.*

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[Docket No. AB-6 (Sub-No. 362X)]

**Burlington Northern Railroad Company—Abandonment Exemption—in King County, WA**

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its line of railroad between BN milepost 12.37 and BN milepost 13.06, a distance of approximately 0.69 miles, in Renton, King County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R.*