

BNR-R-09-01

BEFORE THE
SURFACE TRANSPORTATION BOARD

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UTILITIES COMMISSION

BNSF RAILWAY COMPANY)
ABANDONMENT EXEMPTION)
IN KOOTENAI COUNTY, IDAHO)

DOCKET NO. AB-6
(SUB-NO. 468X)

PETITION FOR EXEMPTION

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
P.O. Box 96157
Fort Worth, TX 76161-0057

Kristy D. Clark
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

Dated: August 7, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY)	
ABANDONMENT EXEMPTION)	DOCKET NO. AB-6
IN KOOTENAI COUNTY, IDAHO)	(SUB-NO. 468X)

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903-05, BNSF's abandonment of a 6.23-mile rail line located in Kootenai County, Idaho.

PROPOSED TRANSACTION

BNSF proposes to abandon its rail line located between Milepost 6.10 near Post Falls and Milepost 12.33¹ at Coeur d'Alene, Kootenai County, Idaho (the "Line"). The Line traverses U.S. Postal Service Zip Codes 83814 and 83854. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line contains federally granted rights of way. Any documentation in BNSF's possession will be made available to those requesting it.

¹ In the Environmental and Historic Reports, BNSF indicated that the Milepost at the end of the Line is 12.34. BNSF, however, subsequently determined that the segment between Mileposts 12.34 and 12.33 had already been approved for abandonment and abandoned.

STATEMENT OF FACTS

BNSF owns a 6.23-mile rail line between the stations of Post Falls and Coeur d'Alene in Kootenai County, Washington. There are no shippers remaining on the Line as the last remaining shipper closed its operations adjacent to the line May 18, 2008. There has been no overhead traffic on the Line for many years prior to that.

The Coeur d'Alene Education Corridor Master Plan outlines long-term plans for the area which include expansion of education institutions, commercial, wholesale, retail and residential development, as well as the creation of parks and trails along the corridor.

BNSF has received a firm offer to purchase the Line between Milepost 12.33 and Milepost 8.66. The property is urgently needed for the ongoing development of the above-mentioned educational corridor. The Bureau of Land Management ("BLM") has also reached a tentative agreement with the City of Coeur d'Alene to exchange the federally granted right of way located on the Line for land in the general area that is more suitable to BLM's use. The Line between Milepost 8.66 and Milepost 6.10 will be converted to industry track and used for storage of surplus rail cars.²

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 6.23-mile rail line.

² BNSF intends to consummate the abandonment of the portion of the Line between Milepost 8.66 and Milepost 12.33. BNSF will utilize the abandonment authority requested in this proceeding to reclassify the portion of the Line between Milepost 6.10 and Milepost 8.66 to industry track. See STB Docket No. 290 (Sub-No. 274X), *Norfolk Southern Railway Company – Abandonment Exemption – In Mecklenburg County, NC* (not printed), served April 9, 2004.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope; or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to use liberally the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a

formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, BNSF will be able to avoid the significant opportunity costs associated with retaining this Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g., STB Docket No. AB-497 (Sub-No. 1X), Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected as the only customer on the Line for the past several years was Stimson Lumber which closed its operations May 18, 2008. Stimson supports the abandonment.

B. This Transaction Is of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g., Docket No. AB-6 (Sub-No. 349X), Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993; Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company –*

Abandonment Exemption – Gilchrist and Levy Counties, FL (not printed), served January 16, 1992.

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon a 6.23-mile line that traverses an area of high-end educational, commercial and residential development. There are no longer any active rail customers located along the Line. The shortness of the Line, the limited geographic area involved, and the lack of any active rail customers demonstrate the limited scope of the proposed abandonment. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

C. This Transaction Will Not Result in an Abuse of Market Power

There are no shippers on the Line. The last remaining customer on the Line was Stimson Lumber which closed its operations adjacent to the Line May 18, 2008. Stimson supports the abandonment. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

**EXEMPTION FROM SECTION 10904 AND 10905
IS ALSO WARRANTED**

BNSF has received a firm offer to purchase the portion of the Line located between Milepost 12.33 and Milepost 8.66. The property is urgently needed for the continued development of the area's educational corridor. The Bureau of Land Management has also

reached a tentative agreement with the City of Coeur d'Alene to exchange the federally granted right of way located on the Line for land in the area that is more suitable to BLM's use. The Line between Milepost 8.66 and Milepost 6.10 will be reclassified as industry track and used for storage of surplus rail cars. Accordingly, BNSF seeks an exemption from 49 U.S.C. § 10904-05 to expedite the sale of the appropriate section of the Line for expansion of higher education institutions and other civic uses. The proposed land conveyances and subsequent development will benefit the community economically, culturally and aesthetically.

The Board and its predecessor have granted exemptions from Sections 10904 and 10905 when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail freight service. As previously explained, there is no longer traffic on the Line and there is no known potential for same. Reinstitution of rail freight service under Section 10904 would be incompatible with the City's intended uses of the Line. Because there is no present or reasonably foreseeable future need for freight rail service on the Line, an offer of financial assistance would only be filed by someone intending to use the corridor for non freight rail purposes (which is not permitted by Section 10904) or to extort money from the local community.

The Board should grant the requested relief because the Line is needed for a valid public purpose (expansion of an economically viable education corridor) and there is no overriding public need for continued rail freight service along the Line. Applying the offer of financial assistance requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C.

§§ 10101(2) and (7)]. As previously explained, regulation of this transaction is not necessary to protect shippers from an abuse of market power. The last shipper on the Line closed operations May 18, 2008 and supports the abandonment.

The Line offers no known freight rail growth opportunities, even for a short line operator. Land use around the Line has already moved away from freight applications. It is actively moving from industrial and low-end commercial applications altogether. Land values along the right of way average almost \$8 per square foot which is well beyond what a rail-oriented Pacific Northwest manufacturer or distributor would pay for real estate. Consequently, there is little, if any, chance of a rail customer locating on the Line. Furthermore, Interstate 90 which runs largely parallel to the Line is a significant transportation corridor, public and private. See STB Docket No. AB-33 (Sub-No. 141X), *Union Pacific Railroad Company – Abandonment Exemption – In Pima County, AZ* (not printed), served February 16, 2000 (exemption granted where line was needed for public projects including bike/pedestrian paths); STB Docket No. AB-558X, *Doniphan, Kensett and Searcy Railway – Abandonment Exemption – In Searcy, White County, AR* (not printed), served May 6, 1999 (exemption granted where line was needed for construction project); STB Docket No. AB-3 (Sub-No. 139X), *Missouri Pacific Railroad – Abandonment and Discontinuance of Operations Exemption – In Houston, Harris County, TX* (not printed), served December 31, 1996 (exemption granted where line was needed for expansion of warehouse and hiking and bike trail).

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on July 17, 2009.

CERTIFICATES OF SERVICE

The Certificate of Service of the Environmental and Historic Reports is attached to this Petition as Exhibit B. The Certificate of Service for this Petition for Exemption is attached as Exhibit C.

CERTIFICATE OF PUBLICATION

The Certificate of Publication is attached as Exhibit D.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit E.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903-05 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition and related abandonment request.

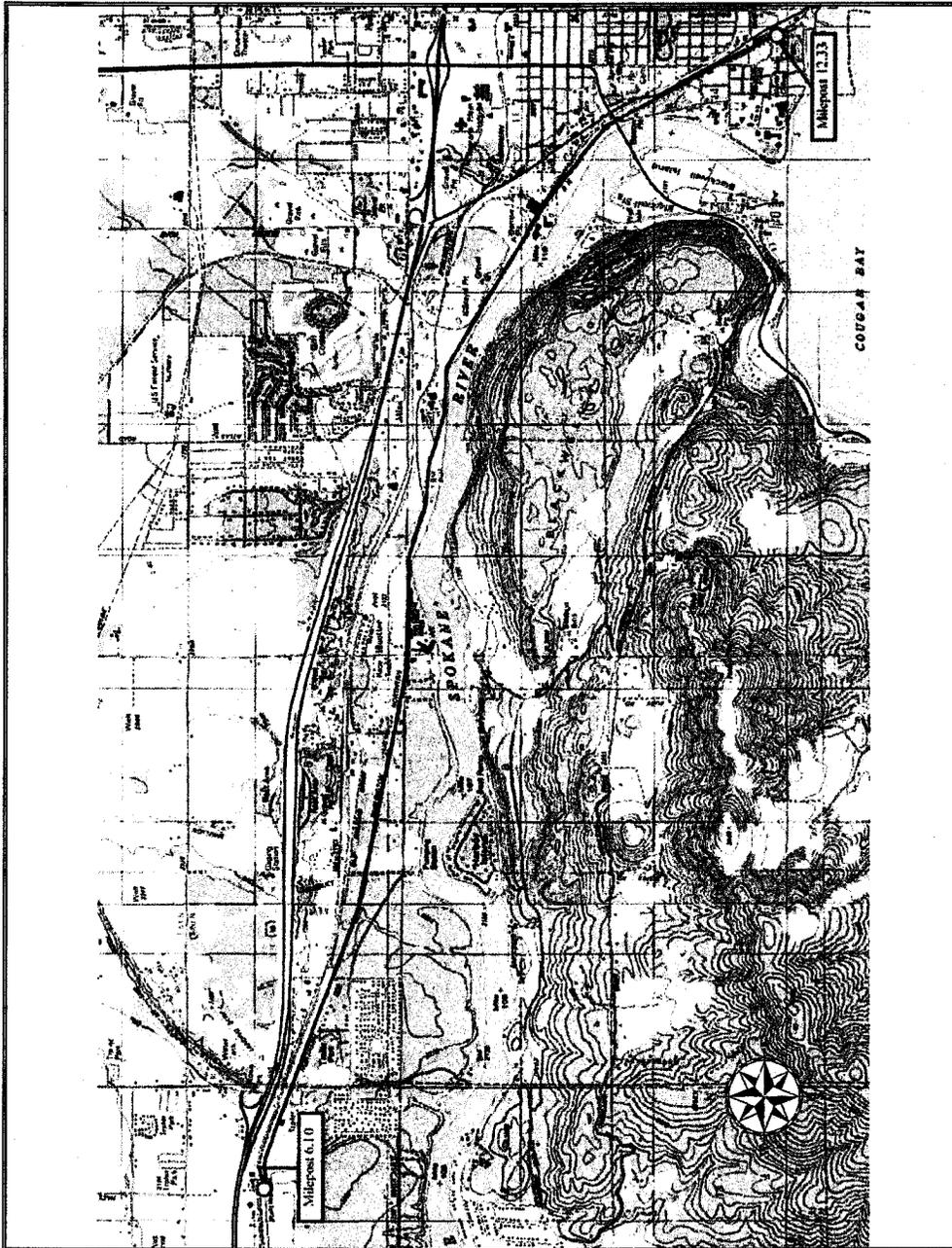
Respectfully submitted,



KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

Dated: August 7, 2009

EXHIBIT A



**BNSF Line Segment 381
Milepost 6.10 to Milepost 12.33
Coeur d'Alene Branch
Kootenai County, Idaho**

**STB Docket No.
AB-6 (Sub-No. 468X)**

Base map – United States Geological Survey
Coeur d'Alene and Post Falls quadrangles
7.5-minute series

Map source date 1979/07/01
DRG Creation Date: 1997/04/09
DRG Coordinate System: UTM
DRG Datum: NAD27

EXHIBIT B

**CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS**

The undersigned hereby certifies that a copy of the foregoing Environmental and/or Historic Reports in STB Docket No. AB-6 (Sub-No. 468X) for the Post Falls to Coeur d'Alene rail line in Kootenai County, Idaho was served by first class mail on the 17th day of July, 2009 on the following:

Ms. Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Susan Pengilly
Compliance Coordinator and Deputy SHPO
Idaho State Historical Society
2205 Old Penitentiary Road
Boise, ID 83712

Scott Clark
Director
Kootenai County Building and Planning
PO Box 9000
Coeur d'Alene, ID 83816-9000

Brad Jordan
Commissioner
Coeur d'Alene Planning Commission
710 Mullan Avenue
Coeur d'Alene, ID 83814

Gary Cooper
District Manager - Coeur d'Alene District
Bureau of Land Management
3815 Schreiber Way
Coeur d'Alene, ID 83815

Barbara Rice
Program Leader
National Park Service, Pacific West Region
1111 Jackson Street, Suite 700
Oakland, CA 94607

Clifford Villa
Assistant Regional Counsel
U.S. EPA - Region 10
1200 Sixth Avenue
Seattle, WA 98101

Idaho Department of Environmental Quality
PO Box 83720
Boise, ID 83706

Jeff Burwell
State Conservationist
Natural Resources Conservation Service
9173 West Barnes Drive, Suite C
Boise, ID 83709-1574

Mark Addy
District Conservationist
National Resources Conservation Service
7830 Meadowlark Way, Suite C-1
Coeur d'Alene, ID 83815

Suzanne Audet
Recovery Programs Branch Chief
Upper Columbia Fish and Wildlife Office
11103 East Montgomery Drive
Spokane Valley, WA 99206

U.S. Fish and Wildlife Service
Region 1 Office of Regional Director
911 Northeast 11th Avenue
Portland, OR 97232-4181

Gregg Rayner
Regulatory Project Manager
US Army Corps of Engineers-Walla Walla
3815 Schreiber Way
Coeur d'Alene, ID 83815-8362

Chip Corsi
Idaho Fish and Game Regional Office
2885 West Kathleen Avenue
Coeur d'Alene, ID 83815

Michael C. Gridley
City Attorney
City of Coeur d'Alene
710 East Mullan Avenue
Coeur d'Alene, ID 83814

Dated: August 7, 2009



KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-6 (Sub-No. 468X) was mailed via first class mail on August 7, 2009, to the following parties:

State Public Service Commission

Idaho Public Utilities Commission
Commission Secretary
PO Box 83720
Boise, ID 83720-0074

Military Traffic Management Command

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

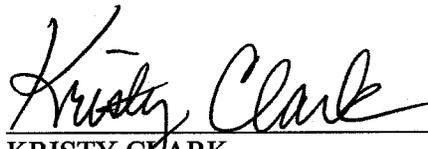
National Park Service

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, SW
Washington, DC 20250

Dated: August 7, 2009



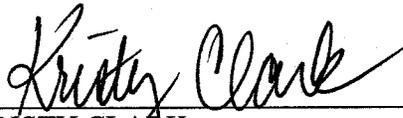
KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

EXHIBIT D

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB-6 (Sub-No. 468X) was published on July 29, 2009, in the *Coeur d'Alene Press*, a newspaper of general circulation in Kootenai County, Idaho as required by 49 C.F.R. § 1105.12.

Dated: August 7, 2009



KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

EXHIBIT E

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 468X)

**BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
KOOTENAI COUNTY, IDAHO**

On August 10, 2009, BNSF Railway Company ("BNSF") filed with the Surface Transportation Board ("STB" or "Board") a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to abandon a line of railroad extending from Milepost 6.10 near Post Falls to Milepost 12.33 at Coeur d'Alene, Idaho, which traverses U.S. Postal Service Zip Codes 83814 and 83854, a distance of 6.23 miles in Kootenai County, Idaho.

The line contains federally granted rights of way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by November 30, 2009).

Any offer of financial assistance (OFA) under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500. See 49 C.F.R. 1002(f)(25).³

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

³ BNSF is also seeking an exemption from the OFA procedures which, if granted, will preclude the filing of an OFA.

Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$200 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-6 (Sub-No. 468X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, Texas 76131.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in abandonment proceedings will normally be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: _____ 2009.

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