

Decision No. C22-0820

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0502R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, ON BEHALF OF OTERO COUNTY, FOR AUTHORITY TO REPLACE TIMBER CROSSING MATERIAL WITH CONCRETE CROSSING SURFACE AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING COUNTY ROAD 24, USDOT NO. 003-368M, IN OTERO COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: December 21, 2022

Adopted Date: December 21, 2022

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Otero (Otero County) on November 9, 2022, requesting authority to remove the existing timber crossing and to install a new concrete crossing using Federal Section 130 Funds, at the crossing of Otero County Road 24 (OCR 24) with the tracks of the BNSF Railway (BNSF) at railroad mile post 560.526 of the Powder River Subdivision, National Inventory No. 003368M, near the Town of Swink, Otero County, State of Colorado.

2. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed on November 14, 2022.

3. On December 9, 2022, BNSF filed a Notice of Intervention. BNSF does not contest or oppose the application.

4. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

5. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

6. Now being fully advised in the matter, we grant the Application.

A. Findings of Fact

7. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

8. CDOT requests authority to change the crossing surface from timber to concrete at the crossing of OCR 24 with the BNSF.

9. There was one property damage only accident at the crossing that occurred in 1979.

10. CDOT states the current traffic volume using the crossing is approximately 100 vehicles per day (VPD) at an unposted speed limit of 55 miles per hour (MPH) with approximately 20 percent heavy vehicles using the crossing. School buses do use the crossing. Traffic is projected to grow to approximately 115 VPD by 2026 and 180 VPD by 2041. There are currently approximately 12 thru train movements per day using the crossing at speeds of up to 55 MPH with no current projections of future train traffic growth.

11. The estimated cost for the work at the crossing is \$44,854 for the signal work and \$25,000 for the civil engineering elements of construction with Federal Section 130 Funds paying for the cost of the project.

12. CDOT estimates that construction will begin on March 6, 2023 and be completed by December 29, 2023. CDOT will be required to file a copy of the signed Construction and Maintenance Agreement for this crossing prior to starting work at the crossing. We will expect this signed agreement to be filed no later than March 6, 2023 prior to the start of construction. We will also require CDOT to inform the Commission in writing that the crossing work is complete and operational within ten days of completion. The Commission will expect this letter by December 23, 2023. However, the Commission does understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

13. We will require CDOT and BNSF to update their respective parts of the crossing inventory form for this crossing and file a copy of the updated crossing inventory form in this proceeding. The Commission will expect this information to be filed with the completion of the crossing work by December 23, 2023.

B. Conclusions

14. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

15. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

16. Because the Application is unopposed, the Commission will determine this matter, upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

17. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety are met by granting the Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Otero (Otero County) on November 9, 2022, requesting authority to remove the existing timber crossing and to install a new concrete crossing using Federal Section 130 Funds, at the crossing of Otero County Road 24 (OCR 24) with the tracks of the BNSF Railway (BNSF) at railroad mile post 560.526 of the Powder River Subdivision, National Inventory No. 003368M, near the Town of Swink, Otero County, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The intervention of BNSF is granted.

3. The Application is granted.

4. CDOT is authorized and ordered to proceed with replacement of the crossing surface at OCR 24 in Otero County.

5. CDOT shall file a copy of the signed Construction and Maintenance Agreement for this project by March 6, 2023 prior to starting work at the crossing.

6. CDOT shall inform the Commission in writing that the crossing changes are complete and operational within ten days of completion. We shall expect this letter by December 23, 2023. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

7. CDOT and BNSF shall be required to update the National Inventory Form for this crossing and file a copy of the updated crossing inventory form in this proceeding by December 23, 2023.

8. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners