

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-497 (Sub-No. 3X)

MINNESOTA NORTHERN RAILROAD, INC.–  
ABANDONMENT EXEMPTION–IN POLK AND NORMAN COUNTIES, MN

Decided: December 4, 2006

By petition filed on August 16, 2006, Minnesota Northern Railroad, Inc. (MNN), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad in its Ada Subdivision extending from milepost 64.0, south of Beltrami, to the end of the line at milepost 47.0, south of Ada, a distance of 17.0 miles, in Polk and Norman Counties, MN (the line). Notice of the filing was served and published in the Federal Register on September 5, 2006 (71 FR 52369-70). On August 7, 2006, as supplemented on November 22, 2006, the Agassiz Recreation Trail, Joint Powers Board (ART), filed a request for imposition of a public use condition and for issuance of a notice of interim trail use (NITU). We will grant the exemption, subject to trail use, public use, historic, environmental, and standard employee protective conditions.

BACKGROUND

The line was originally part of a line of the Great Northern Railway (GNR), which ran between the Canadian border, near Noyes, MN, and Minneapolis, MN. The line eventually came under the ownership of BNSF Railway Company through a series of mergers. MNN acquired the Ada Subdivision, which included the line, from RailAmerica Transportation Corp. in 1997. KBN, Inc. (KBN), acquired MNN in 2000.<sup>1</sup> Since 2002, there have been as many as seven shippers that have used the line to transport products such as oats, barley, edible beans and fertilizer.<sup>2</sup> MNN states that there has been no rail service over the line since April 3, 2006, when the line was embargoed due to unsafe track conditions caused by flood damage.

MNN seeks to abandon the line to avoid maintenance and opportunity costs. Due to the declining levels of traffic on the line, the flood embargo, the investment needed to rehabilitate the line, and the poor prospects for increased business in the future, MNN states that continued operation of the line would result in significant losses. Prior to the embargo, the total number of

---

<sup>1</sup> See KBN, Inc.–Control Exemption–Minnesota Northern Railroad, Inc. and St. Croix Valley Railroad Company, STB Finance Docket No. 33911 (STB served Aug. 31, 2000).

<sup>2</sup> The shippers, Green Meadow, Earthwise, Feed & Seed, Lee Bean & Seed, Triple Crown, Mark Hellerud, and Triangle Fertilizer, are all located in Ada.

carloads shipped on the line decreased from 162 in 2002 to 86 in 2005. If service resumed, MNN projects that only 20 carloads of traffic from Triple Crown and Triangle Fertilizer would be shipped over the line.<sup>3</sup> That level of traffic would result in total revenues of \$12,860 in the forecast year (20 carloads x \$643 (MNN's current revenue per car)). However, MNN calculates that on the basis of costs for maintenance of way and train crew alone, such operations would result in an operating loss of \$105,290 (\$102,000 to maintain track and bridges + \$16,150 in operating costs - \$12,860 in revenue). In addition, MNN calculates that an expenditure of \$354,230 would be required to rehabilitate the line to comply with Federal Railroad Administration Class 1 safety standards. With a declining customer base on the line, MNN submits that it would not generate enough revenue from rail operations to justify the costs necessary to rehabilitate and maintain the line. Finally, MNN states that the shippers are currently using alternative transportation to handle their goods.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing MNN to avoid the cost of owning and maintaining a line that is minimally used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because all active shippers on the line are currently engaged in alternative transportation for their products. Nevertheless, to ensure that shippers on the line are informed of our action, we will require MNN to serve on the shippers a copy of this decision within 5 days of the service date of this decision and notice and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to

---

<sup>3</sup> According to MNN, Green Meadow has made arrangements to ship from a different location on the Canadian Pacific Railway, Triple Crown's traffic is likely to remain at its 1995 level of 16 carloads, and Lee Bean & Seed's traffic is not likely to return to MNN. Earthwise, Feed & Seed, and Mark Hellerud have not shipped on the line since 2002.

granting the exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

MNN has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 13, 2006, requesting comments by November 13, 2006.

In the EA, SEA states that MNN has identified 15 bridges of which all or portions of 14 of them are 50 years old or older. MNN states that it does not believe that the structures meet the criteria for listing in the National Register of Historic Places (National Register). SEA notes that the reconstruction of a majority of the bridges could also prevent them from meeting the criteria necessary for listing on the National Register. However, in a letter dated September 6, 2006, Ms. Britta L. Bloomberg, Deputy State Historic Preservation Officer, State of Minnesota (SHPO), states that MNN's historic report does not address the potential historical significance of the line. The SHPO states that the right-of-way (ROW) itself may meet the criteria for inclusion in the National Register. In light of the SHPO's concerns, SEA recommends a condition requiring MNN to retain its interest in, and take no steps to alter, the historic integrity of the ROW itself, excluding the tracks and ties, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. SEA also recommends that MNN be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties. SEA further recommends that MNN not be permitted to file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.

In response to the EA, by letters dated October 23, 2006, and October 25, 2006, the Tribal Historic Preservation Officer, Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, and the Tribal Historic Preservation Officer, Leech Lake Band of Ojibwe, respectively, state that they are unaware of or have no concerns regarding any cultural or religious sites that may be impacted by salvage activities. However, SEA recommends that a condition be imposed requiring MNN to immediately cease all salvage work and notify SEA, potentially affected Federally recognized tribes, and the Minnesota Historical Society (MHS), in the event any archaeological sites, human remains, funerary items or associated artifacts are discovered.

In an e-mail dated October 23, 2006, the U.S. Department of Commerce, National Geodetic Survey (NGS) has indicated that approximately 16 geodetic station markers may be located in the area of the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring MNN to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the markers by NGS.

The conditions recommended by SEA both in the EA and in response to the comments filed after the EA was served will be imposed. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources

As previously noted, ART filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for imposition of a public use condition under 49 U.S.C. 10905. ART has submitted a statement of willingness to assume financial responsibility for the ROW, and has acknowledged that use of the ROW is subject to possible future reconstruction and reactivation of the ROW for rail service as required under 49 CFR 1152.29. By letter filed on November 8, 2006, MNN states that it is willing to negotiate with ART for interim trail use. Because ART's request complies with the requirements of 49 CFR 1152.29, and MNN is willing to enter into trail use negotiations, we will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, MNN may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

Following abandonment and salvage of the line, the ROW may be suitable for other public use. ART requests imposition of a 180-day public use condition prohibiting MNN from: (1) disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying trail-related structures such as bridges, trestles, culverts, and tunnels, but not from removing tracks, ties and signal equipment. ART states that the rail corridor has considerable value for recreational trail use. According to ART, the 180-day period is needed to assemble and review title information, complete a trail plan, begin financial networking with other state agencies, and initiate negotiations with MNN.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. ART has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the ROW, MNN must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, MNN is not

required to deal exclusively with ART, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and the conditions that MNN shall: (1) be prohibited from disposing of the corridor and removing or destroying trail-related structures such as bridges, trestles, culverts, and tunnels, but not from removing tracks, ties and signal equipment for a period of 180 days from the effective date of this decision and notice to enable any State or local government agency, or other interested person, to negotiate the acquisition of the line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; (3) retain its interest in, and take no steps to alter, the historic integrity of the ROW itself (excluding the tracks and ties) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed, report back to SEA regarding any consultations with SHPO and other section 106 consulting parties, and seek removal of this condition before filing a consummation notice or initiating any salvage activities; (4) immediately cease all salvage work and notify SEA, potentially affected Federally recognized tribes (tribes) and MHS, in the event any archaeological artifacts are discovered. SEA, SHPO, tribes, MHS and MNN shall then consult to determine whether any mitigation measures are necessary; and (5) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of geodetic station markers identified by NGS.

2. MNN is directed to serve a copy of this decision and notice on all shippers located on the line within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

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 the management of, 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 the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

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 ROW.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice 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 the effective date of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, MNN may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 14, 2006, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,300.<sup>4</sup>

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

9. Provided no OFA has been received, this exemption will be effective on January 3, 2007. Petitions to stay must be filed by December 19, 2006; petitions to reopen must be filed by December 29, 2006.

---

<sup>4</sup> The filing fee for OFAs was increased to \$1,300 effective April 19, 2006. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MNN's filing of a notice of consummation by December 4, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary