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SERVICE DATE - APRIL 29, 2005

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-933X]

Dakota, Missouri Valley & Western Railroad, Inc.—Abandonment Exemption—in  
Burleigh and Emmons Counties, ND

Dakota, Missouri Valley & Western Railroad, Inc. (DMVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 32.3-mile portion of the McKenzie-Linton Line between milepost 13.0, a point south of Moffitt, Burleigh County, ND, and milepost 45.3, in Linton, Emmons County, ND.<sup>1</sup> The line traverses United States Postal Service Zip Codes 58524, 58544, 58552 and 58560.

DMVW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (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 Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental

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<sup>1</sup> DMVW acquired by purchase, a permanent and exclusive rail service easement over the line from The Burlington Northern and Santa Fe Railway Company, now BNSF Railway Company. See Dakota, Missouri Valley & Western Railroad, Inc.—Acquisition and Operation Exemption—A Line of The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33639 (STB served Sept. 1, 1998).

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 this exemption, any employee adversely 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. 10502(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 May 31, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 9, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be

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<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

filed by May 19, 2005, with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to DMVW's representative: Janie Sheng, Kirkpatrick & Lockhart Nicholson Graham LLP, 1800 Massachusetts Ave., N.W., Washington, DC 20036.

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

DMVW has filed an environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 6, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] 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 trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DMVW 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 DMVW's filing of a

notice of consummation by April 29, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at  
“WWW.STB.DOT.GOV.”

Decided: April 22, 2005.

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

Vernon A. Williams

Secretary