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SERVICE DATE – JANUARY 20, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 56X)

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY  
COMPANY—ABANDONMENT EXEMPTION—  
IN BOTTINEAU, ROLETTE, AND TOWNER COUNTIES, ND

Decided: January 19, 2010

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CPR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 61-mile line of railroad between milepost 535 +/- (in Kramer) and milepost 474.5 +/- (in Bisbee), in Bottineau, Rolette, and Towner Counties, ND. Notice of the exemption was served and published in the Federal Register on September 5, 2008 (73 FR 51883) (September 2008 notice). The exemption became effective on October 7, 2008. By decision served on October 6, 2008, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to 2 salvage consultation conditions.

The September 2008 notice stated that, if consummation has not been effected by CPR's filing of a notice of consummation by September 5, 2009, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. On December 9, 2009, CPR submitted a request to extend the time for filing its consummation notice. As justification for an extension, CPR explains that the line is leased to Northern Plains Railroad, Inc. (NPR)<sup>1</sup>, and that it would be premature for CPR to consummate the abandonment while the lease remains in effect. CPR notes that NPR has filed a notice of exemption to discontinue service on the line<sup>2</sup> and, therefore, CPR requests that its authority to abandon the line be extended until 30 days after NPR's discontinuance authority has been consummated.

The Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time

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<sup>1</sup> See Northern Plains Railroad, Inc.—Lease and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a/ Canadian Pacific Railway, STB Finance Docket No. 33324 (STB served Jan. 9, 1997).

<sup>2</sup> See Northern Plains Railroad, Inc.—Discontinuance of Service Exemption—in Bottineau, Rolette, and Towner Counties, ND, STB Docket No. AB-1054 (Sub-No. 1X).

period, the notice of consummation is due to be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier. The lease, which CPR failed to mention in its notice of exemption for abandonment authority, remains a barrier to the consummation of that authority. See Thompson v. Texas Mexican Ry., 328 U.S. 134 (1946). Therefore, CPR has 60 days from NPR's exercise of its discontinuance authority to consummate the abandonment.<sup>3</sup> CPR's request for an extension of time to file a notice of consummation is unnecessary and does not require further action by the Board.

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

It is ordered:

1. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>3</sup> NPR received discontinuance authority in Northern Plains Railroad, Inc.—Discontinuance of Service Exemption—in Bottineau, Rolette, and Towner Counties, ND, STB Docket No. AB-1054 (Sub-No. 1X) (STB served Dec. 28, 2009). NPR's authority will be effective on January 27, 2010. As a result, the earliest that CPR may consummate its abandonment is January 27, 2010.