

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 415 (Sub-No. 2X)

ESCANABA & LAKE SUPERIOR RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN ONTONAGON AND HOUGHTON COUNTIES, MICH.

Decided: July 21, 2010

On April 9, 2010, Escanaba & Lake Superior Railroad Company (ELS) filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon approximately 42.93 miles of rail line in Ontonagon and Houghton Counties, Mich., extending between milepost 408.02 at Ontonagon and milepost 365.09 at Sidnaw. On April 27, 2010, the Board served and published at 75 Fed. Reg. 22174 a notice instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b) and stated that a final decision would be issued on or before July 28, 2010.

On May 12, 2010, the State of Michigan Department of Natural Resources and Environment filed a request for a public use condition and for issuance of a notice of interim trail use or abandonment under the National Trails System Act, 16 U.S.C. § 1247(d). A number of letters and correspondence in support of, or in opposition to, the abandonment have also been submitted, including a letter from U.S. Senator Carl Levin of Michigan expressing concern about the proposal.

On July 12, 2010, ELS filed a letter requesting that the Board hold the proceeding in abeyance for 60 days to permit parties interested in the future disposition of the rail line additional time to explore alternatives to abandonment. ELS also requests that the Board clarify that neither Heartland Business Bank (Heartland), which has initiated a foreclosure action against ELS,¹ nor any other party may foreclose on ELS's rail assets during the pendency of the proceeding.

The petition to hold this proceeding in abeyance is unopposed. It is reasonable and consistent with the Board's policy of facilitating private-sector negotiation and resolution of disputes. Therefore, the petition will be granted, and the proceeding will be held in abeyance for

¹ According to the parties, Heartland initially filed its action in the Delta County Circuit Court in Escanaba, Mich. on October 15, 2009 (Case No. 09-20280-CH). ELS then filed a notice of removal to the federal courts in the U.S. District Court for the Western District of Michigan, Northern Division (Case No. 2:09-cv-243). The case has subsequently been remanded back to state court.

60 days. A final decision will be issued on September 27, 2010. Any applicable deadlines, such as those at 49 U.S.C. § 10904, will also be moved forward 60 days.

Regarding Heartland's foreclosure action involving this still-active rail line and ELS's other rail assets, interested persons should note well-settled law that the Board has exclusive jurisdiction over transportation by rail carriers and associated property, and that the remedies provided under the statutes administered by the Board preempt the remedies provided under federal and state law if such laws unreasonably interfere with railroad operations or interstate commerce. 49 U.S.C. § 10501(b); see, e.g. Norfolk S. Ry. and the Ala. Great S. R.R.—Petition for Declaratory Order, FD 35196 (STB served March 1, 2010). See also City of Auburn v. STB, 154 F.3d 1025 (9th Cir. 1998).

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

It is ordered:

1. ELS's petition to hold the proceeding in abeyance for 60 days is granted.
2. The Board will issue a final decision on September 27, 2010.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.