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SERVICE DATE – AUGUST 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-391 (Sub-No. 10X)

RED RIVER VALLEY & WESTERN RAILROAD COMPANY  
–ABANDONMENT EXEMPTION–  
IN FOSTER AND WELLS COUNTIES, ND

Decided: August 16, 2007

The Red River Valley & Western Railroad Company (RRVW) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 27.76 miles of rail line from approximately milepost 1.4 in or near Carrington, ND, to the end of the line at approximately milepost 29.16 in or near Bowdon, ND. Notice of the exemption was served and published in the Federal Register on November 3, 2004 (69 FR 64131-32). By decision served on December 1, 2004, the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to six environmental conditions. By decision served on October 21, 2005, the time for filing a notice of consummation was extended until December 7, 2006.<sup>1</sup>

In a letter filed on July 16, 2007, RRVW submitted a notice of consummation to the Board, advising that it had completed consultations with the requisite agencies pursuant to the conditions imposed. RRVW further advised that it had complied with the section 106 historic preservation condition and attached a letter dated June 26, 2007, from the State Historical Society of North Dakota (SHPO) concurring with SEA’s determination that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places.<sup>2</sup>

Based on the information provided, SEA recommends that the section 106 historic preservation condition imposed in the December 1, 2004 decision be removed. Given SEA’s recommendation, the section 106 condition will be removed.

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<sup>1</sup> The notice served and published on November 3, 2004, and subsequent decisions served on December 1, 2004, and October 21, 2005, contained an incorrect milepost. The milepost shown as 21.4 should be 1.4.

<sup>2</sup> The SHPO also noted, however, in the event that any fill material is required for the project, it should be derived from a source surveyed by an archaeologist and found to contain no significant cultural resources. According to SEA, RRVW has agreed to do so.

By letter filed August 13, 2007, RRVW requests withdrawal of its notice of consummation, indicating that it was prematurely filed because the historic preservation condition had not been fully satisfied or removed. 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, but only if there are no legal or regulatory barriers to consummation. Because the historic preservation condition has remained a barrier to consummation, RRVW has prematurely filed its notice of consummation. Accordingly, RRVW's request to withdraw its July 16, 2007 notice will be granted, and RRVW's notice of consummation will be due 60 days from the service date of this decision removing the section 106 historic preservation condition.

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

It is ordered:

1. This proceeding is reopened.
2. RRVW's request to withdraw its notice of consummation is granted.
3. Upon reconsideration, the section 106 historic preservation condition imposed in the decision served December 1, 2004, is removed.
4. RRVW may re-file its notice of consummation by October 16, 2007 (60 days from the service date of this decision).
5. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary