

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-850X

ST. CROIX VALLEY RAILROAD COMPANY—ABANDONMENT AND
DISCONTINUANCE OF SERVICE EXEMPTION—IN PINE AND KANABEC
COUNTIES, MN

Decided: July 11, 2008

By decision served on July 7, 2003 (July 7 decision), the Board granted St. Croix Valley Railroad Company (SCXY) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to: (1) abandon its rail easement over a line of The Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 58.3 at Mora Junction (Brook Park) and milepost 47.6 at Mora, a distance of 10.7 miles,¹ and (2) discontinue rail service pursuant to overhead trackage rights over a rail line of BNSF between Hinckley and Mora Junction (Brook Park), a distance of 8.2 miles, in Pine and Kanabec Counties, MN, subject to environmental and standard employee protective conditions.

By decision and notice of trail use or abandonment served on August 6, 2003 (August 6 decision), the proceeding was reopened and the July 7 decision was modified to implement interim trail use/rail banking, under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, for the 2.5-mile segment of the right-of-way in Pine County, between milepost 58.3 at Mora Junction (Brook Park) and the Pine County/Kanabec County Line. The August 6 decision also included a now-expired public use condition for that segment, under 49 U.S.C. 10905 and 49 CFR 1152.28.

In 2004, SCXY notified the Board that it had consummated the abandonment of its rail easement on the segment of the line located in Kanabec County. Board personnel notified SCXY that consummation of the abandonment was not possible, however, because a condition to approval of abandonment and discontinuance had not been satisfied. Consequently, SCXY rescinded the notice of consummation.

In an April 23, 2007 letter, Kanabec County Regional Rail Authority (Rail Authority) requests issuance of a Notice of Interim Trail Use (NITU) for the segment of the line in Kanabec County, between milepost 55.8 and milepost 47.0. Rail Authority has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it

¹ At the request of SCXY, in a decision served on March 30, 2007, milepost 47.6 was corrected to milepost 47.0 to indicate the actual milepost that corresponds to Mora.

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 right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

Rail Authority's initial position was that BNSF, which owns the land in the right-of-way, had the right to negotiate for rail banking and interim trail use and that BNSF was willing to negotiate with Rail Authority concerning trail use. Board personnel notified counsel for Rail Authority that a statement of willingness to negotiate for trail use is required from SCXY because that entity holds the common carrier obligation on this segment of rail line.

Subsequently, in a letter filed on June 2, 2008, SCXY advised the Board that it has not consummated abandonment of its rail easement on the portion of the line in Kanabec County and that it is willing to negotiate with Rail Authority for rail banking and interim trail use on that segment of the line. SCXY states that the June 2, 2008 letter is intended to supersede the statement in Rail Authority's April 23, 2007 letter that BNSF has the right to negotiate for rail banking and interim rail use of the right-of-way.²

Because Rail Authority's request complies with the requirements of 49 CFR 1152.29 and SCXY is willing to negotiate for trail use, a NITU will be issued for the portion of the right-of-way in Kanabec County, between milepost 55.8 and milepost 47.0. The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, SCXY may fully abandon that portion of the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision 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. Upon reconsideration, the July 7 decision exempting the abandonment of the railroad easement described above is modified to the extent necessary to implement interim trail use/rail banking negotiations as set forth below, for a period of 180 days commencing from the service date of this decision until January 7, 2009, regarding the portion of the line between milepost 55.8 and milepost 47.0, in Kanabec County.

² According to SCXY, BNSF acknowledges that SCXY is the appropriate party to conduct negotiations for interim trail use/rail banking.

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 management of, for 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 right-of-way.

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 right-of-way.

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 January 7, 2009, interim trail use may be implemented. If no agreement is reached by that time, SCXY may fully abandon the rail easement on the above-described portion of the line, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary