

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-57 (Sub-No. 53X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN RACINE COUNTY, WI

Decided: August 28, 2003

Soo Line Railroad Company (Soo) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon approximately 7.5 miles of its line of railroad between milepost 18.43 ± (near Kansasville) and milepost 25.93 ± (in Burlington), in Racine County, WI. Notice of the exemption was served and published in the Federal Register on July 30, 2003 (68 FR 44839). The exemption is scheduled to become effective on August 29, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 4, 2003. In the EA, SEA recommends that the following conditions be imposed on any decision granting abandonment authority. First, SEA notes that the National Geodetic Survey (NGS) has identified five geodetic station makers that may be affected by the proposed abandonment. Therefore, SEA recommends that Soo provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any geodetic station markers so that plans can be made for their relocation. Second, SEA states that the U. S. Army Corps of Engineers (Corps) has advised that the line proposed for abandonment passes through the Fox River, Hoosier Creek, unnamed tributaries to Hoosier Creek Canal, and their adjacent wetlands, and that the discharge of dredged or fill materials into those waterways or adjacent wetlands would require a Corps permit. The Corps also states that the waste materials generated by the project should be disposed of at approved, upland disposal sites. Therefore, SEA also recommends that Soo dispose of all waste materials at approved, upland disposal sites. Third, SEA states that the Wisconsin Department of Natural Resources (WisDNR) has advised that: (1) aquatic and terrestrial threatened and endangered resources are present in the area of the proposed abandonment; (2) surface waters and wetlands of the Lower and Middle Fox/Illinois Basins are present; and (3) the state threatened fish, River Redhorse, is present in the Fox River. Therefore, SEA recommends that prior to beginning salvage activities, Soo be required to consult with WisDNR regarding: (1) aquatic and terrestrial threatened and endangered resources; (2) surface waters and wetlands of the Lower and Middle Fox/Illinois Basins; (3) the state threatened fish, River Redhorse; (4) the results of the Phase I Environmental Site Assessment; and (5) options for waste disposal. Finally, addressing the concerns of the Wisconsin Department of Transportation (WisDOT), SEA recommends that Soo: (1) comply with

WisDOT's Abandonment Railroad Line Salvage and Clean-Up Policy/Standards/Procedures; (2) protect surveying benchmarks, monumentation and mapping information for the line; (3) remove the rail, ties and ballast at the crossings of the state highways; (4) prior to conducting salvage activities, consult with WisDOT's District Maintenance section regarding obtaining any permits; (4) handle traffic while the state highway crossings are being removed; (5) restore the roadway in like kind; and (6) prior to conducting salvage activities, consult with the maintaining authority to coordinate work before removing crossings across other streets and roadways.

Comments to the EA were due by August 18, 2003. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On August 4, 2003, WisDNR¹ filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. WisDNR 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, 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 has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response submitted on August 11, 2003, Soo states that it has no objection to issuance of a NITU but requests that it be allowed to dispose of rail materials located along the corridor. Because WisDNR does not object and the request appears reasonable, Soo will be allowed to dispose of rail materials as long as it complies with the environmental conditions imposed herein.

Because WisDNR's request complies with the requirements of 49 CFR 1152.29 and Soo is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, Soo may fully abandon 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.

As conditioned, 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.

¹ WisDOT, the designated state agency in rail matters in the State of Wisconsin, is filing on behalf of WisDNR.

2. Upon reconsideration, the notice served and published in the Federal Register on July 30, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until February 24, 2004), and subject to the conditions that Soo shall: (1) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any geodetic station markers so that plans can be made for their relocation; (2) dispose of all waste materials at approved, upland disposal sites; (3) consult with WisDNR regarding (a) aquatic and terrestrial threatened and endangered resources, (b) surface waters and wetlands of the Lower and Middle Fox/Illinois Basins, (c) the state threatened fish, River Redhorse, (d) the results of the Phase I Environmental Site Assessment, and (e) options for waste disposal; and (4) address the concerns of WisDOT by (a) complying with WisDOT's Abandonment Railroad Line Salvage and Clean-Up Policy/Standards/Procedures, (b) protecting surveying benchmarks, monumentation and mapping information for the line, (c) removing the rail, ties and ballast at the crossings of the state highways, (d) consulting with WisDOT's District Maintenance section regarding obtaining any permits prior to conducting salvage activities, (e) handling traffic while the state highway crossings are being removed, (f) restoring the roadway in like kind, and (g) consulting with the maintaining authority to coordinate work before removing crossings across other streets and roadways prior to conducting salvage activities.

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 February 24, 2004, interim trail use may be implemented. If no agreement is reached by that time, Soo may fully abandon the line, provided the 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.

Vernon A. Williams
Secretary