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SERVICE DATE – MARCH 18, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE

Docket No. AB 57 (Sub-No. 61X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
RACINE COUNTY, WIS.

Decided: March 17, 2014

Soo Line Railroad Company, d/b/a Canadian Pacific (Soo Line) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 10.63-mile line of railroad located approximately between milepost 7.8 and milepost 18.43 in Racine County, Wis. Notice of the exemption was served and published in the Federal Register on February 14, 2014 (79 Fed. Reg. 9042). The exemption is scheduled to become effective on March 19, 2014.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on February 21, 2014, recommending that several environmental conditions be imposed on any decision granting abandonment authority.

In the EA, OEA states that the U.S. Army Corps of Engineers, Detroit District (Corps) commented under its civil works/floodplain management program that the area of the proposed abandonment crosses several federally mapped floodplains. The Corps recommends that Soo Line coordinate with county officials and the State of Wisconsin regarding the applicability of a floodplain permit. Therefore, OEA recommends that a condition be imposed requiring Soo Line to consult with county officials and the State of Wisconsin to determine if a floodplain permit is required and, if so, to comply with its reasonable requirements.

OEA also states that National Geodetic Survey (NGS) commented that five geodetic station markers are located within the area of the proposed abandonment. Accordingly, OEA recommends that a condition be imposed on any decision granting abandonment authority requiring Soo Line to consult with NGS and notify NGS at least 90 days prior to beginning any salvage activities that could disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.

OEA states in the EA that Soo Line has consulted with the Wisconsin Coastal Management Program (WCMP) via telephone on December 18, 2013, to determine whether the proposed abandonment affects a coastal zone for which a consistency certificate is required. OEA has not received a response from WCMP. OEA therefore recommends that a condition be imposed on any decision granting abandonment authority requiring Soo Line to consult with

WCMP to determine whether state coastal management consistency certification is required and to report the results of these consultations in writing prior to the onset of the salvage operations.

Further, OEA states that Soo Line submitted an historic report and provided the Wisconsin State Historic Preservation Office (SHPO) with a copy. OEA notes, however, that the SHPO has not submitted comments on the proposed abandonment and that OEA has not been able to consider the SHPO's opinion before determining whether the proposed project could affect historic properties. Therefore, OEA recommends that a condition be imposed requiring Soo Line to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, has been completed.

OEA issued its final EA on March 13, 2014, noting that no comments to the EA were received by the March 7, 2014 due date and recommending that the previously recommended environmental conditions be imposed. Accordingly, the conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On February 27, 2014, the Wisconsin Department of Transportation (WisDOT) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with Soo Line for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, WisDOT has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on March 13, 2014, Soo Line has indicated its willingness to negotiate with WisDOT for interim trail use.

Because WisDOT's request complies with the requirements of 49 C.F.R. § 1152.29 and Soo Line is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, Soo Line may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on February 14, 2014, exempting the abandonment of the line segment described above is modified to the extent necessary to implement interim trail use/rail banking for the right-of-way as set forth below, to permit WisDOT to negotiate with Soo Line for trail use for the right-of-way for a period of 180 days from the service date of this decision and notice, that is, until September 15, 2014. The abandonment is also subject to the conditions that Soo Line shall: (1) consult with Racine County Officials and the State of Wisconsin to determine if a floodplain permit is required and, if so, comply with its reasonable requirements; (2) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; (3) consult with WCMMP prior to beginning any salvage activities to determine whether state coastal management consistency certification is required and report the results of these consultations in writing to OEA prior to the onset of salvage operations; and (4) (a) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register until completion of the Section 106 process of the NHPA; (b) report back to OEA regarding any consultations with the SHPO, any other Section 106 consulting parties, and the public, and (c) be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

3. The request for a NITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, is granted.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by September 15, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, Soo Line may fully abandon the line, upon expiration of the public use condition imposed here.

9. This decision is effective on its service date.

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