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SERVICE DATE - LATE RELEASE OCTOBER 13, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 57 (Sub-No. 62X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN HENNEPIN COUNTY, MINN.

Decided: October 13, 2015

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 0.4-mile line of railroad between milepost 0.59 +/- (approximately 100 feet southeast of the bridge that crosses Interstate 94) and milepost 0.99 +/- at or near Essex Street, S.E. (East side spur) in Hennepin County, Minn. (the Line). Notice of the exemption was served and published in the Federal Register on September 14, 2015 (80 Fed. Reg. 55,173). The exemption is scheduled to become effective on October 14, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 18, 2015, recommending that a historic preservation condition be imposed on any decision granting abandonment authority. In the EA, OEA stated that Soo Line served an historic report on the Minnesota State Historic Preservation Office (SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA also stated that the SHPO has requested additional information from Soo Line so that the SHPO could evaluate potential impacts to historic and archaeological resources. Thus, OEA was unable to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing or listed in the National Register of Historic Places (National Register). Therefore, OEA recommended that Soo Line be required 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 (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f), has been completed. OEA also recommended that Soo Line be required to report back to OEA regarding any consultations with the SHPO and the public and be prohibited from filing its consummation notice or initiate 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.

OEA issued its final EA on October 9, 2015, noting that no comments to the EA were received by the October 5, 2015 due date and reiterating that the previously recommended historic preservation condition be imposed. Accordingly, the historic preservation condition recommended by OEA in the EA will be imposed.

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On September 24, 2015, the City of Minneapolis (the City) filed a request for 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. The City has also submitted a statement of willingness to assume full 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 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 under 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on October 2, 2015, Soo Line notified the Board that it is willing to negotiate an agreement for interim trail use with the City.

Because the City's request complies the requirements of 49 C.F.R. § 1152.29, and Soo Line is willing to negotiate with the City for trail use, a NITU will be issued to the City. 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 Line may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

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.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 14, 2015, exempting the abandonment of the Line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with Soo Line for trail use of the subject Line for a period of 180 days commencing from the service date of this decision and notice (until April 10, 2016). The abandonment is also subject to the condition that the City shall: (1)(a) 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 (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate 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. 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: (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.

4. 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 paragraph 3 above.

5. 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. See 49 C.F.R. § 1152.29(d)(2) and (h).

6. 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.

7. If an agreement for interim trail use/rail banking is reached by April 10, 2016, interim trail use may be implemented. If no agreement is reached by that time, Soo Line may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its date of service.

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