

29881
DO

SERVICE DATE - LATE RELEASE JANUARY 6, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-391 (Sub-No. 5X)

RED RIVER VALLEY & WESTERN RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN BURLEIGH, KIDDER, & STUTSMAN COUNTIES, ND

Decided: January 5, 1999

Red River Valley & Western Railroad Company (RRVW) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 59.70 miles of rail line from milepost 21.55, west of Woodworth, to milepost 81.25, in Regan, in Burleigh, Kidder and Stutsman Counties, ND. Notice of the exemption was served and published in the Federal Register on December 9, 1998 (63 FR 67985-86). The exemption is scheduled to become effective on January 8, 1999.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served December 14, 1998. In the EA, SEA indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed December 15, 1998, the City of Tuttle (City) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it could negotiate with RRVW for acquisition of the right-of-way for use as a recreational trail.

The City requests that RRVW be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that RRVW be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The City states that it needs the full 180-day period to review title information, complete a trail plan, and commence negotiations with RRVW. The City submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, 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. By reply filed January 4, 1999, RRVW indicated that it is not opposed to interim trail use.¹

¹ RRVW states that, while it owns the rail line for which it is seeking abandonment authority, RRVW's line enjoys an easement over real property owned by The Burlington Northern and Santa Fe Railway Company (BNSF). RRVW also states that, upon abandonment of the line, its easement
(continued...)

The City's request complies with the requirements of 49 CFR 1152.29 and RRVW is willing to negotiate. Therefore, 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, RRVW may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The City has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.²

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, RRVW must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RRVW is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

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(...continued)
will terminate and BNSF will own an unencumbered interest in the right-of-way.

² In view of RRVW's representation that BNSF owns the underlying real property, the opportunity for the City or others to negotiate the acquisition of the line for public use outside the context of interim trail use might not be available.

1. This proceeding is reopened.

2. Upon reconsideration, the notice of exemption served and published in the Federal Register on December 9, 1998, 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, subject to the condition that RR/VW keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the January 8, 1999 effective date (until July 7, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

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 July 7, 1999, interim trail use may be implemented. If no agreement is reached by that time, RR/VW may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary