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OEA

SERVICE DATE – OCTOBER 15, 2010

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 330 (Sub-No. 4X)

**Otter Tail Valley Railroad Company, Inc.– Abandonment Exemption –
in Otter Tail County, Minn.**

BACKGROUND

In this proceeding, Otter Tail Valley Railroad Company, Inc. (OTVR), filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Otter Tail County, Minn. The rail line proposed for abandonment extends 0.822 miles from milepost 48.422 near Fergus Falls, Minn., to milepost 47.60 near Hoot Lake (the Line) and passing through U.S. Postal Zip Code 56537. A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, Otter Tail Power Corporation (OTP), one of OTVR's largest shippers on a system-wide basis, proposes to purchase a portion of the right-of-way.

According to OTVR, all of the track and materials have been salvaged and as such, no traffic has moved over the Line in more than 2 years. However, OTVR's records do not indicate when or who salvaged the track and other materials. Therefore, since no track or other materials exist, OTVR believes that abandonment, if approved, would not result in any additional salvage operations.

ENVIRONMENTAL REVIEW

OTVR submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. OTVR served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 330 (Sub-No. 4X).

Diversion of Traffic

According to OTVR, the Line was salvaged many years ago and no records exist indicating when said salvage occurred. Accordingly, OTVR notes that no local traffic has moved over the Line for at least 2 years. Therefore, if approved, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

According to OTVR, the entire right-of-way has been salvaged, therefore, no adverse impacts typically associated with salvage activities would occur. OTVR states that they have no knowledge of when the Line was salvaged or by whom. OTVR also believes that the abandonment would be consistent with existing land use plans.

OTVR does not believe that any prime agricultural land would be affected.

OTVR does not know if the Line would be suitable for interim trail use/rail banking as BNSF Railway Company, owner of the underlying real estate, intends to sell the right-of-way to OTP.

Because salvage of the right-of-way has already occurred, OTVR does not believe that the proposed abandonment would result in adverse impacts to endangered or threatened species or areas designated as a critical habitat. Furthermore, OTVR is not aware of any wildlife sanctuaries or refuges, national or state parks or forests that would be adversely affected. In a letter dated September 15, 2010, the U.S. Fish and Wildlife Service, Division of Realty, states that it does not own any lands or interests in lands in the vicinity of the proposed abandonment. In an e-mail dated October 5, 2010, the Minnesota Department of Natural Resources states that it has no concerns or objections to the abandonment, as proposed.

OTVR states that, if approved, it believes that the abandonment would be consistent with all water quality standards and that no permits under Sections 402 or 404 of the Clean Water Act would be required since no salvage would take place.

Because the track and materials have already been removed, OEA believes that adverse impacts to air and noise would not be experienced as a result of the proposed abandonment.

In an e-mail dated September 8, 2010, the National Geodetic Survey states that there are no survey markers in the area of the proposed abandonment.

Based on all information available to date, OEA does not believe that abandonment activities would cause significant environmental impacts.

HISTORIC REVIEW

In its Historic Report, OTVR states that right-of-way is approximately 80 feet wide and consists of 11.3 acres. According to OTVR, the Line begins north of Main Street in Fergus Falls and travels in a northeasterly direction crossing the Otter Tail River and terminating at Hoot Lake. OTVR also states that there are no bridges or structures that are 50 years old or older located on the Line. OTVR is not aware of any archaeological resources.

According to OTVR, in 1881, the Board of the Northern Pacific Railroad (NPR) authorized the construction of a line extending from Wadena, Minn. to Fergus Falls, Minn. The State of Minnesota granted the railroad land for the construction on the condition that it began by March 1, 1882. The rail line was to be built from a point on the NPR at or near Wadena southwest through Fergus Falls, which includes the Line that OTVR seeks to abandon, and then northward via Pelican Rapids to a junction with the NPR.

OTVR served the Historic Report on the Minnesota Historical Society (SHPO), pursuant to 49 C.F.R. § 1105.8(c). In a letter dated October 5, 2010, the SHPO has submitted the following comments:

1. The Historic Report provided by OTVR states that the tracks had been previously removed, however, the current Google Earth photos show track still in place. Please send current photos of the existing land use and site conditions on the rail line segment proposed for abandonment.
2. The reports further states that there are no structures associated with the rail segment to be abandoned, however Google Earth shows a railroad bridge on this segment, near the power plant. Please send current photos of the bridge.
3. The SHPO also raises questions regarding the future use of the right-of-way if the abandonment is approved. OEA notes that according to OTVR, the underlying real estate is owned by BNSF Railway Company who intends to sell it to OTP.

In an effort to address the primary issues raised by the SHPO, OEA contacted Mr. Jeff Olson, OTP, on October 11, 2010, who provided clarification regarding the existing rail conditions. According to Mr. Olson, the Line had already been salvaged at the time he assumed his current position in the fall/winter of 2003/2004. Furthermore, Mr. Olson believes that the confusion resulting from Google Earth photographs reviewed by the SHPO arises from the fact that at one time, there used to be 2 rail lines and 2 bridges whereas now, only 1 rail line and 1 bridge exist. The existing rail line seen in the Google Earth photographs is operated by BNSF Railway Company who provides short-line service to OTP. The Line proposed for abandonment, including its accompanying bridge was, at one time, located to the south and east, adjacent to the Otter Tail River, and no longer exist.

OTVR will provide the SHPO with additional information relating to proposed salvage of the right-of-way and rail-related structures. Pending the SHPO's review of the additional information to be provided by OTVR, OEA is recommending a condition requiring OTVR 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) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.² The database indicated that the following 10 federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: 1) Flandreau Santee Sioux Tribe of South Dakota; 2) Leech Lake Band of the Minnesota Chippewa Tribe; 3) Lower Sioux Indian Community; 4) Minnesota Chippewa Tribe; 5) Prairie Island Indian Community; 6) Santee Sioux Nation; 7) Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; 8) Spirit Lake Tribe; 9) Upper Sioux Community; and 10) White Earth Band of Minnesota Chippewa Tribe. Accordingly, OEA is sending a copy of this EA to those tribes for review and comment.

CONDITIONS

We recommend that the following condition be imposed on any decision granting abandonment authority:

The Otter Tail Valley Railroad Company, Inc., shall 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 of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. The Otter Tail Valley Railroad Company, Inc., shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the Minnesota Historical Society and the public. The Otter Tail Valley Railroad Company, Inc., may 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.

² Native American Consultation Database, <http://home.nps.gov/nacd/> (last visited October 7, 2010).

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

OTVR states that BNSF Railway Company owns the underlying real estate and intends to sell the property to OTP if the abandonment is approved.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

OTVR does not know if the Line would be suitable for interim trail use/rail banking as BNSF Railway Company, owner of the underlying real estate, intends to sell the right-of-way to OTP.

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send original and 2 copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 330 (Sub-No. 4X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: October 15, 2010.

Comment due date: November 1, 2010.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment