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SERVICE DATE - LATE RELEASE MARCH 10, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-864X

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY—ABANDONMENT  
EXEMPTION—IN MCLEOD, CARVER AND HENNEPIN COUNTIES, MN

Decided: March 10, 2004

Hennepin County Regional Railroad Authority (HCRRA) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 43.9+/- mile line of railroad, between milepost 24.6+/- near Wayzata and milepost 68.5+/- in Hutchinson, in McLeod, Carver and Hennepin Counties, MN. In its notice, HCRRA indicated that the right to conduct freight rail operations on the line is pursuant to a freight rail operations easement in its favor. HCRRA further indicated that the underlying property located in McLeod County is owned by McLeod County Regional Railroad Authority (MCRRA), in Carver County is owned by the Carver County Regional Railroad Authority (CCRRA), and in Hennepin County is owned by HCRRA, and that MCRRA, CCRRA and HCRRA are all political subdivisions of the State of Minnesota. HCRRA has filed this notice to terminate its common carrier obligation on the line and, upon the effective date of the proposed abandonment exemption, it has agreed to release the freight rail operations easement in its favor for that portion of the line located in Carver County to CCRRA, and for that portion of the line located in McLeod County to MCRRA, and HCRRA will retain its portion of the line located in Hennepin County, all for the purposes of preserving the line for future rail transportation use and other compatible transportation uses. Notice of the exemption was served and published in the Federal Register on February 10, 2004 (69 FR 6372). The exemption is scheduled to become effective on March 11, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 13, 2004. In the EA, SEA indicates that the U.S. Army Corps of Engineers - St. Paul District had not responded to HCRRA's environmental report at the time the EA was prepared. SEA further indicates that HCRRA noted that wetlands would not be affected by the proposed abandonment. However, SEA notes that the line crosses numerous streams and lakes and it is uncertain whether the bridges over them would be removed by HCRRA. Because bridge removal activities have the potential to impact waters of the United States, SEA recommends that, prior to conducting any abandonment and salvaging activities, HCRRA shall consult with the U.S. Army Corps of Engineers - St. Paul District on permitting requirements for any abandonment and salvage activities that may occur within waters of the United States including but not limited to streams, rivers, lakes and wetlands.

SEA states that the U.S. Department of Commerce's National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that HCRRA shall notify NGS 90 days prior to salvage activities in order to plan for the potential removal of the five geodetic station markers.

SEA also states that the Minnesota Pollution Control Agency (MPCA) expressed concern about potential environmental impacts of the proposed abandonment. The MPCA concerns are related to solid and hazardous waste disposal, asbestos, stormwater runoff, contaminated soil, and above and below ground storage tanks. Therefore, SEA recommends that, prior to conducting any abandonment and salvaging activities, HCRRA shall consult with MPCA regarding solid and hazardous waste disposal, asbestos, stormwater runoff, contaminated soil, and above and below ground storage tanks.

Finally, SEA states in its EA that the Minnesota Historical Society (the State Historic Preservation Office or SHPO) responded to HCRRA's historical report but had not completed its assessment of the proposed abandonment at the time this EA was prepared. The SHPO requested additional information on the extent of fire damage to the Hutchinson Station, and also noted that it was not clear whether the rail line itself meets eligibility criteria for the National Register of Historic Places. Therefore, pending completion of the SHPO's assessment, SEA recommends that HCRRA shall retain its interest in and take no steps to alter the historic integrity of the right-of-way (ROW) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments to the EA were due by March 1, 2004. Comments were filed by the U.S. Environmental Protection Agency - Region 5 (EPA). EPA has expressed concerns regarding removal and disposal of rails and ballast, storage and use of fuels for salvaging construction equipment, prevention and/or control of spills, revegetation of disturbed areas with native flora, and maintenance of culverts and bridges. Based on EPA's comments, SEA now recommends that HCRRA shall, prior to commencement of any salvaging activities it may conduct for this project, contact EPA (Kenneth A. Westlake, 312-886-2910) concerning salvage methods, final disposition of salvage debris including crossties preserved with creosote, procedures for storing and fueling construction equipment, procedures for the prevention and/or control of spills, revegetation of disturbed areas with native flora, and culvert and bridge maintenance activities. The environmental conditions recommended by SEA will be imposed.

SEA also indicated in the EA that the ROW may be suitable for other public use following abandonment. On February 17, 2004, the Carver County Regional Railroad Authority (CCRRA) filed a request for issuance of a notice of interim trail use (NITU) for that portion of the ROW between the east county line and the west county line of Carver County, under the National Trails System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with HCRRA for acquisition of the above-described portion of the ROW for use as a recreational trail. CCRRA requests that HCRRA be prohibited from disposing

of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that HCRRA be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment.<sup>1</sup> CCRRA states that this time is needed to conduct negotiations with HCRRA for acquisition of the ROW for use as a trail.

CCRRA submitted a statement indicating its willingness to assume full financial 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 payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By letter dated February 3, 2004, attached to CCRRA's requests, HCRRA consents to negotiating with CCRRA for interim trail use.

Because CCRRA's request complies with the requirements of 49 CFR 1152.29 and HCRRA 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, HCRRA may fully abandon that portion of the line subject to the NITU, provided the conditions imposed in this proceeding are met. 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 ROW 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). CCRRA has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

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.

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<sup>1</sup> By letter filed on February 27, 2004, CCRRA clarified the time period for which it seeks to negotiate trail use and public use.

If a trail use agreement is reached only on a portion of the ROW sought, HCRRA must keep the remaining ROW 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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, HCRRA is not required to deal exclusively with CCRRA, 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. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on February 10, 2004, exempting abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below for that portion of the line between the east county line and the west county line of Carver County, for a period of 180 days commencing from the March 11, 2004 effective date of the exemption (until September 7, 2004), and subject to the conditions that HCRRA shall:
  - (1) prior to conducting any abandonment and salvaging activities, consult with the U.S. Army Corps of Engineers - St. Paul District on permitting requirements for any abandonment and salvaging activities that may occur within waters of the United States including but not limited to streams, rivers, lakes and wetlands;
  - (2) notify NGS 90 days prior to salvage activities in order to plan for the potential removal of the five geodetic station markers;
  - (3) prior to conducting any abandonment and salvaging activities, consult with MPCA regarding solid and hazardous waste disposal, asbestos, stormwater runoff, contaminated soil, and above and below ground storage tanks;
  - (4) retain its interest in and take no steps to alter the historic integrity of the ROW until completion of the section 106 process of the NHPA; and
  - (5) prior to commencement of any salvaging activities it may conduct for this project, contact EPA (Kenneth A. Westlake, 312-886-2910) concerning salvage methods, final disposition of salvage debris including crossties preserved with creosote, procedures for storing and fueling construction equipment, procedures for the prevention and/or control of spills, revegetation of disturbed areas with native flora, and culvert and bridge maintenance activities.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, HCRRA may discontinue service and salvage track and related materials. For the above-described portion of the line, HCRRA shall keep intact the ROW underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the described portion of the line for public use. If an interim trail use/rail banking

agreement is executed before September 7, 2004, the public use condition will expire to the extent that the trail/use-rail banking agreement covers the same line.

4. 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 ROW.

5. 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 ROW.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by September 7, 2004, interim trail use may be implemented. If no agreement is reached by that time, HCRRA may fully abandon the portion of the line between the east county line and the west county line of Carver County, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary