

SERVICE DATE – OCTOBER 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-988 (Sub-No. 1X)

NEBKOTA RAILWAY, INC.—ABANDONMENT EXEMPTION—IN DAWES AND
SHERIDAN COUNTIES, NE

Decided: September 28, 2007

By decision served on August 22, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Nebkota Railway, Inc. (NRI) of a 30.3-mile segment of its line of railroad between milepost 404.3 near Chadron 69337 and the end of the line at milepost 374 at Rushville 69360, in Dawes and Sheridan Counties, NE. Notice of the filing was served and published in the Federal Register on May 24, 2007 (72 FR 29205). The exemption was made subject to environmental and standard employee protective conditions. The exemption became effective on September 21, 2007.

On August 28, 2007, the Nebraska Game and Parks Commission (NGPC), late-filed a request for the issuance of a notice of interim trail use (NITU) for the subject line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29.¹ NGPC submitted a statement of willingness to assume 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By letter filed on August 31, 2007, NRI stated that it will consent to the issuance of a NITU only after no offer of financial assistance (OFA) has been received and the exemption has become effective on September 21, 2007.² On September 17, 2007, NGPC renewed its request for a trail use

¹ The May 24, 2007 notice provided that requests for trail use/rail banking were to be filed by June 13, 2007. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that NGPC's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

² The August 22, 2007 decision stated that an OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue had to be received by the railroad and the Board by August 31, 2007. None was filed.

condition (or, alternatively, for a public use condition). NGPC also asked for an extension of the effective date of the exemption if necessary for issuance of a trail use condition.

Because NGPC's request for issuance of a NITU complies with the requirements of 49 CFR 1152.29 and NRI is willing to negotiate for trail use, a NITU will be issued.³ 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, NRI may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this action 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. The late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the decision served on August 22, 2007, 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 NGPC to negotiate with NRI for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until March 29, 2008), and subject to the conditions imposed in the prior decision.
4. If an interim trail use/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.
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 of the right-of-way.
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.

³ Now that the exemption in this proceeding has become effective, the conditions for NRI's consent have been met.

7. If an agreement for interim trail use/rail banking is reached by March 29, 2008, interim trail use may be implemented. If no agreement is reached by that time, NRI may fully abandon the line, provided that the environmental conditions imposed in the August 22, 2007 decision 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