

SURFACE TRANSPORTATION BOARD

TERMINATION OF MODIFIED RAIL CERTIFICATE AND
NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Finance Docket No. 35149

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY–MODIFIED RAIL
CERTIFICATE–BETWEEN CAPUTA AND RAPID CITY, SD

Decided: April 27, 2009

By decision served on June 27, 2008, Mitchell-Rapid City Regional Railroad Authority (MRCRRA)¹ was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, Subpart C, Modified Certificate of Public Convenience and Necessity, to operate a line of railroad between Caputa and Rapid City, SD (Caputa-Rapid City segment), owned by the South Dakota Department of Transportation (SDDOT). The Caputa-Rapid City segment extends from milepost 646.0, near Caputa, to milepost 659.6 in Rapid City, in Pennington County, SD, a distance of approximately 13.6 miles.

On March 31, 2009, MCRRA filed notice of its intent to terminate service under the modified certificate over the Caputa-Rapid City segment.² On that same date, SDDOT filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the Caputa-Rapid City segment. SDDOT submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (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.

Because SDDOT's request complies with the requirements of 49 CFR 1152.29, a NITU will be issued for the above-described line. SDDOT is free to negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, then no further Board action is necessary. If no agreement is reached within 180 days, the line may be fully abandoned. See 49 CFR 1152.29(c)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(c)(2).

¹ MRCRRA is a political subdivision of the State of South Dakota.

² Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. MCRRA's notice states that it will terminate service effective June 1, 2009. Therefore, the NITU issued through this decision will not become effective until June 1, 2009.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for a NITU under 16 U.S.C. 1247(d) is accepted.
2. 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, 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 owner against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
3. Interim trail use/rail banking is subject to the future restoration of rail service and the user's continuing to meet the financial obligations for the ROW.
4. 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 certificate and request that it be vacated on a specified date.
5. If an agreement for interim trail use/rail banking has been reached 180th day after the effective date of MCRRA's notice of termination of its modified certificate, interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned.
6. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary