

35797  
SEA

SERVICE DATE – MAY 6, 2005

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**STB Docket No. AB-933X**

**Dakota, Missouri Valley & Western Railroad, Inc. – Abandonment Exemption – in  
Burleigh and Emmons Counties, ND**

**BACKGROUND**

In this proceeding, Dakota, Missouri Valley & Western Railroad, Inc. (DMVW) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a portion of the McKenzie-Linton Line, in Burleigh and Emmons Counties, North Dakota. The rail line proposed for abandonment extends approximately 32.3 miles from milepost 13.0, a point south of Moffit in Burleigh County to milepost 45.3, in Linton, Emmons County. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.<sup>1</sup>

**DESCRIPTION OF THE LINE**

According to DMVW, no local traffic has moved over the rail line for about four years and any overhead traffic can be rerouted over other lines. DMVW states that the right-of-way of the rail line is approximately 50 feet wide, with some sections being approximately 250 feet wide. The rail line is located in a rural and residential area. DMVW states that there are eight bridges on the rail line and one tool shed. All of these structures are believed to be 50 years old or older.

**ENVIRONMENTAL REVIEW**

DMVW submitted an environmental and historic 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. DMVW served the environmental and historic report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR

---

<sup>1</sup> DMVW states that Linton Industrial Development Commission (LIDC) owns the rail line, subject to DMVW's exclusive freight easement. LIDC also owns the railroad tracks, track materials and related track structures and facilities on the line between milepost 28.7 at Hazelton, North Dakota and milepost 45.3 at Linton, North Dakota.

1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

As stated above, no traffic has moved on the line segment for about four years and DMVW foresees little possibility that new on-line traffic would develop in the future. Accordingly, 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.

According to DMVW, if the notice becomes effective, DMVW would remove the rail and other track materials from a portion of the rail line from about milepost 13.0 to milepost 28.7. DMVW plans to leave the structures on the line in place and handle salvage operations within the right-of-way using existing access routes. As stated above, according to DMVW, LIDC owns the remaining track, track materials and structures. DMVW states that it has provided LIDC with a copy of the environmental and historic report and correspondence from agencies that sets forth applicable conditions and requirements for salvage activities.

The Natural Resources Conservation Service (NRCS) submitted comments stating that the proposed abandonment would not convert important farmland and should have no significant impact on existing soil and water conservation practices in the area. However, NRCS recommends that, to the extent possible, all natural drainage patterns should be maintained and that land use that may be affected during abandonment should be returned to the original land use cover. NRCS also recommends that if the railroad road bed is removed, spoil should not be placed in wetlands or natural watercourses, and the local NRCS district conservationist for each county can provide wetland inventory maps. NRCS further recommends that erosion control measures should be in effect during all periods of road bed removal activities. Accordingly, we will recommend a condition requiring DMVW to consult with NRCS prior to beginning salvage activities regarding its recommendations.

The North Dakota Department of Health, Environmental Health Section (NDDH) submitted comments stating that environmental impacts from the proposed abandonment would be minor and could be controlled by proper construction methods. NDDH recommends that DMVW should do the following: (1) follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (2) report any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during abandonment and salvage operations to NDDH; (3) check with local officials regarding local storm water management considerations and obtain a NDDH permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover, if salvage activities would disturb one or more acres; and, because the rail line overlies part of the McKenzie aquifer, (4) take care to avoid spills of any materials that may have an adverse effect on groundwater quality and

immediately report all spills to NDDH and perform appropriate remedial actions. Accordingly, we will recommend a condition to address NDDH's concerns and recommendations.

The U.S. Fish and Wildlife (FWS) submitted comments stating that no Federally listed endangered or threatened species and proposed and designated critical habitat are present within the proposed project's area of influence. The North Dakota Game and Fish Department (NDGFD) has also submitted comments stating that it does not believe the abandonment would have any significant adverse effects on wildlife or wildlife habitat, including endangered species, based on the information provided by DMVW.

FWS also states that it administers the Small Wetlands Acquisition Program, as part of the National Wildlife Refuge System, through much of North Dakota. Under this program, FWS purchases wetland and grassland easements and acquires lands in fee title. FWS states that the wetlands located along the rail line in Townships 134-135 North, Range 76 West, in Emmons County, south of Hazelton, are protected by easements that prohibit the draining, filling, burning, or leveling of wetland basins on the tract. Moreover, a portion of the line in Burleigh County runs adjacent to FWS' Long Lake National Wildlife Refuge.

FWS states that it requires all wetlands under its jurisdiction to be avoided during project activities when possible and DMVW would need to obtain Special Use or right-of-way permits for any activities resulting in impacts to wetlands protected by easements and/or fee title. The issuance of these permits would be subject to the final determination of a refuge compatibility review process. According to FWS, permits would not be required if salvage activities take place in existing rights-of-way and do not affect nearby wetlands.

As stated above, DMVW plans to conduct salvage activities within the right-of-way using existing access routes. DMVW also states that it plans to comply with any applicable FWS requirements in connection with any planned salvage activities. However, in order to address FWS' comments, we will recommend a condition requiring that DMVW consult further with FWS regarding its requirements for areas under its jurisdiction. We will also recommend a condition requiring DMVW to conduct salvage activities within the right-of-way using existing access routes, as it has proposed.

The U.S. Army Corps of Engineers, Omaha District (Corps) has submitted comments stating that Emmons County participates in the National Flood Insurance Program and according to the Flood Insurance Rate Map (community-panel number 380327 A, dated February 4, 1987), the proposed location for the project is located within Zone D (areas of undetermined but possible flood hazards). The Corps states that the possibility may exist for a flood hazard that could result from heavy rainfall in the immediate area, which would produce runoff in excess of storm sewer and local drainage way capacities. According to the Corps, detailed definitions of this hazard would require a site-specific investigation. Accordingly, we will recommend a condition requiring DMVW to consult with the appropriate county floodplain administrators<sup>2</sup>

---

<sup>2</sup> According to the North Dakota State Water Commission's website at

and the Corps regarding possible flood hazards that could be incurred by salvage activities and the development of measures to mitigate any such hazards.

The Corps also states that final project plans should be sent to the Bismarck Regulatory Office (Bismarck-Corps) to determine permitting requirements. Accordingly, we will recommend a condition requiring DMVW to submit final salvage plans to the Bismarck-Corps and to consult with the Bismarck-Corps regarding its requirements.

The Corps also recommends that DMVW coordinate the proposed abandonment with the U.S. Environmental Protection Agency (EPA), FWS, NDGFD, and the North Dakota State Historic Preservation Office. DMVW has certified that it submitted a copy of the environmental and historic report to EPA and consulted with EPA. We will also add EPA to the service list for this proceeding to ensure that it receives a copy of this Environmental Assessment (EA). As discussed above, DMVW has consulted with FWS and NDGFD and we have incorporated those agencies' comments into this EA. As discussed below, DMVW has also consulted with the State Historical Society of North Dakota (State Historic Preservation Office or SHPO).

The National Geodetic Survey (NGS) has submitted comments stating that 18 geodetic station markers have been identified that may be affected by the proposed abandonment and requests 90 days notification in advance of activities that will disturb or destroy these markers to plan for their relocation. Accordingly, we will recommend a condition requiring DMVW to notify NGS 90 days prior to beginning salvage activities to plan for the possible relocation of the station markers by NGS.

## **HISTORIC REVIEW**

DMVW served the environmental and historic report on the SHPO, pursuant to 49 CFR 1105.8(c). The SHPO initially submitted comments stating that it recommends that a Class I Cultural Resources Inventory (i.e., files search) of the Area of Potential Effect (APE) be prepared and submitted to the SHPO for consultation. The results of the files search would include a short report detailing all cultural resources (including potential or actual historic properties) in the legal sections of the APE, a table with the APE's legal locations listed, and 7.5' topographic maps with the APE, cultural resources, and previously inventoried areas plotted and identified on them. The SHPO also recommended that any unrecorded railway bridges and/or stations with standing structures over 50 years of age that are to be abandoned be formally recorded on North Dakota Cultural Resource Survey (NDCRS) site forms. The recording would be completed by a state permitted cultural resource firm, and would include recommended evaluations.

---

<http://www.swc.state.nd.us/projects/FloodPlain/Countyadminlist.html>, the contact information for the floodplain administrators for Burleigh and Emmons Counties is as follows: WM. W Augustadt, Building Official, Burleigh County, Box 5503, Bismarck ND 58502, (701) 258-2070; and Del Svalen, DES Director, Emmons County, Box 338, Linton ND, 58552, (701) 254-4486.

DMVW then submitted additional information to the SHPO and the SHPO submitted comments recommending that Bridges 15, 17, 18, 21, 24, 43, and 44 be recorded on NDCRS site forms by a state permitted cultural resource firm and be submitted to the SHPO. Provided that the site forms are acceptably completed for the bridges, the SHPO recommends that a no historic properties affected determination be made for the proposed abandonment. Because the SHPO has indicated that further consultation is necessary, we will recommend a condition requiring DMVW to retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

The SHPO also states that the rail line crosses Appert Lake National Wildlife Refuge near Hazelton and is adjacent to Long Lake National Wildlife Refuge and recommends consultation with FWS regarding those properties. As stated above, DMVW has consulted with FWS and we have incorporated FWS' comments into this EA. We note that FWS did not mention Appert Lake National Wildlife Refuge in its comments. However, we are recommending a condition requiring DMVW to consult further with FWS regarding its requirements for areas under its jurisdiction.

## **CONDITIONS**

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

1. **Dakota, Missouri Valley & Western Railroad, Inc. shall consult with the Natural Resources Conservation Service prior to beginning salvage activities regarding the following recommendations: (1) to the extent possible, maintain all natural drainage patterns and return land use to the original land use cover; (2) avoid placing spoil in wetlands or natural watercourses; and (3) employ erosion control measures during all periods of road bed removal activities.**
  
2. **Dakota, Missouri Valley & Western Railway, Inc. shall: (1) follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (2) report any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during abandonment and salvage operations to the North Dakota Department of Health (NDDH); (3) prior to beginning salvage activities, consult with local officials regarding local storm water management considerations and consult with NDDH regarding its requirements for storm water drainage activities; and, because the rail line overlies part of the McKenzie aquifer, (4) during salvage activities, take care to avoid spills of any materials that may have an adverse effect on groundwater quality and immediately report all spills to NDDH and perform appropriate remedial actions.**

3. **Dakota, Missouri Valley & Western Railway, Inc. shall consult with the U.S. Fish and Wildlife Service (FWS), prior to beginning salvage activities, regarding FWS' requirements for conducting salvage activities that may affect areas under the jurisdiction of FWS.**
4. **As agreed to by Dakota, Missouri Valley & Western Railway, Inc. (DMVW), DMVW shall conduct salvage activities within the right-of-way using existing access routes.**
5. **Dakota, Missouri Valley & Western Railway, Inc. shall consult with the appropriate county floodplain administrators and the U.S. Army Corps of Engineers, Omaha District, regarding the following: (1) possible flood hazards that could be incurred by salvage activities; and (2) the development of measures to mitigate any such hazards.**
6. **Dakota, Missouri Valley & Western Railway, Inc. shall, prior to beginning salvage activities, submit final salvage plans to the Bismarck Regulatory Office of the U.S. Army Corps of Engineers (Bismarck-Corps) and consult with the Bismarck-Corps regarding its requirements.**
7. **Dakota, Missouri Valley & Western Railway, Inc. shall notify the National Geodetic Survey (NGS) 90 days prior to beginning salvage activities to plan for the possible relocation of the salvage markers by NGS.**
8. **Dakota, Missouri Valley & Western Railway, Inc. shall retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.**

## **CONCLUSIONS**

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are 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 four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **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 the petition for 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 CFR 1152.29).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB-933X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Rini Ghosh, the environmental contact for this case, by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at [ghoshr@stb.dot.gov](mailto:ghoshr@stb.dot.gov).

Date made available to the public: May 6, 2005

**Comment due date: May 20, 2005.**

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams  
Secretary

Attachment