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SERVICE DATE – AUGUST 20, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No AB-506 (Sub-No. 1X)

SAULT STE. MARIE BRIDGE COMPANY—ABANDONMENT EXEMPTION—IN
DICKINSON COUNTY, MI

Decided: August 19, 2008

Sault Ste. Marie Bridge Company (SSMB) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon an 0.64-mile rail line between mileposts 29.60 and 30.24 in Iron Mountain, Dickinson County, MI. Notice of the exemption was served and published in the Federal Register on July 22, 2008 (73 FR 42651). The exemption is scheduled to become effective on August 21, 2008.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 25, 2008. In the EA, SEA recommends four conditions. First, SEA notes that, in a letter dated April 15, 2008, the Michigan Department of Environmental Quality (DEQ), Remediation and Redevelopment Division, summarized past activities conducted to remediate contamination problems in the area of the proposed abandonment. This summary was drawn from the "Union Pacific Railroad Site Closure Report, Antoine Rail Yard, Iron Mountain Michigan" dated June-December 2007, and submitted to DEQ on behalf of SSMB by Coleman Engineering Company. Past remediation activities noted in the summary include: the extraction and recycling of 200 gallons of diesel fuel from a former refueling system; the removal and disposal of two tons of non-hazardous sludge; the cleaning of the former track pit; the removal of general rubbish; the excavation of 490 tons of petroleum contaminated soil; and various other remediation activities. In addition to the above, DEQ noted in its letter that it does not concur with the site closure report's conclusions that all corrective actions have been completed in accordance with the Natural Resources Protection Act (Part 201, Environmental Remediation) at the site. As such, SEA recommends a condition requiring SSMB to consult with DEQ regarding steps it will take to ensure that all environmental contaminants have been properly remediated prior to the initiation of salvage operations along the line.

Second, SEA notes that the U.S. Fish and Wildlife Service (FWS) provided comments to SSMB indicating that the area of the proposed abandonment does not contain Federally listed, proposed or candidate species, nor is it located within designated or proposed critical habitat. However, the FWS states that SSMB should determine if the site may be suitable for the Canada Lynx, and/or whether the Canada Lynx may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring SSMB to consult with the FWS, East Lansing Field Office (517-351-8315), prior to the onset of salvage activities to determine any potential impacts that may occur to the Canada Lynx from the proposed abandonment.

Third, in addition to the above, the FWS stated to SSMB that it should consult with the DEQ, Land and Water Management Division (Upper Management District Office, 906-346-8300) regarding the potential impact of the proposed abandonment activities on public trust fish and wildlife resources. Accordingly, SEA recommends a condition to this effect.

Finally, SEA states that the U.S. Army Corps of Engineers (Corps) provided written notice to SSMB stating that DEQ has been delegated permitting authority in the state of Michigan under sections 402 and 404 of the Clean Water Act. SSMB followed up with a request for comment from DEQ regarding any regulatory requirements that may need to be met under the Clean Water Act. In its response, DEQ provided that no permits were required as long as the activities associated with the proposed abandonment would not result in the excavation of fill material or the removal of bridges or culverts from streams or the use of wetlands. In its response, SSMB assured DEQ that it would not be impacting water or wetlands during its planned salvage operations following abandonment of the line. However, DEQ indicated that it needed additional information regarding the proposed project (including site location, maps, etc.) prior to making any definitive assessments regarding the project's potential impacts. Therefore, SEA recommends a condition requiring SSMB to consult with DEQ to ensure that it has the information it needs to properly assess any potential impacts that the proposed abandonment could have to wetlands and streams.

Comments to the EA were due by August 11, 2008. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the rail line. On July 31, 2008, the Michigan Department of Natural Resources (Proponent) filed a request for issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. Proponent has submitted a statement of 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 right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on August 14, 2008, SSMB states that it will negotiate with Proponent for interim trail use.

Because Proponent's request complies with the requirements of 49 CFR 1152.29 and SSMB 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, SSMB 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 noted above, Proponent also requested a 180-day public use condition. Proponent requests that SSMB be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that CSXT 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. Proponent states that the time period is needed to conduct an appraisal and title review and begin negotiations with the carrier.

As an alternative to interim trail use under the Trails Act, the right-of-way 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). Because Proponent has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the August 21, 2008 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. If a trail use agreement is reached on a portion of the right-of-way, SSMB must keep the remaining right-of-way intact 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 right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, SSMB is not required to deal exclusively with Proponent, but may engage in negotiation with other interested persons.

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. Upon reconsideration, the notice served and published in the Federal Register on July 22, 2008, exempting the 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 the right-of-way described above for a period of 180 days commencing from August 21, 2008 effective date of the exemption (until February 17, 2009), and subject to the conditions that SSMB shall: (1) consult with DEQ, Remediation and Redevelopment Division (Mr. Christopher Austin, 906-875-2072), prior to the onset of any salvage activities regarding

potential environmental contamination within the right-of-way of the proposed abandonment project area; (2) consult with DEQ, Land and Water Management Division (Upper Management District Office, 906-346-8300), prior to the onset of salvage activities, regarding the potential impact of the proposed abandonment activities on public trust fish and wildlife resources; (3) consult with DEQ (Crystal Falls Field Office, 906-875-2071), prior to the onset of salvage activities, regarding any reasonable regulatory requirements within its purview under the Clean Water Act; and (4) consult with FWS, East Lansing Field Office (Tameka Dandridge, 517-351-8315), prior to the onset of salvage activities to determine any potential impacts that could occur to the Canada Lynx as a result of the proposed abandonment.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, SSMB may discontinue service and salvage track and related materials. For the above-described line, SSMB shall keep intact the right-of-way, 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 above-described line for public use. If an interim trail use/rail banking agreement is executed before February 17, 2009, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

4. If an interim trail use/rail banking agreement is reached, the agreement 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 for 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.

7. If an agreement for interim trail use/rail banking is reached by February 17, 2009, interim trail use may be implemented. If no agreement is reached by that time, SSMB may fully abandon the above-described line, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary