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SERVICE DATE – JULY 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-933X

DAKOTA, MISSOURI VALLEY & WESTERN RAILROAD, INC.—
ABANDONMENT EXEMPTION—IN BURLEIGH AND EMMONS COUNTIES, ND

Decided: July 26, 2005

Dakota, Missouri Valley & Western Railroad, Inc. (DMVW), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 32.3-mile portion of the McKenzie-Linton Line between milepost 13.0, a point south of Moffitt, Burleigh County, ND, and milepost 45.3, in Linton, Emmons County, ND. Notice of the exemption was served and published in the Federal Register on April 29, 2005 (70 FR 22390). The exemption became effective on May 31, 2005.

By decision served May 31, 2005 (May 2005 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that DMVW shall: (1) prior to beginning any salvage activities, consult with the Natural Resources Conservation Service (NRCS) and during salvage activities: (a) to the extent possible, maintain all natural drainage patterns and return land use to the original land use cover; (b) avoid placing spoil in wetlands or natural watercourses; and (c) employ erosion control measures during all periods of road bed removal activities; (2) follow the specified recommendations contained in the May 2005 decision, which were based on comments received from the North Dakota Department of Health, Environmental Health Section (NDDH) regarding the environmental impacts from the proposed abandonment; (3) 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, and as agreed to by DMVW, conduct salvage activities within the right-of-way using existing access routes; (4) consult with the appropriate county floodplain administrators and the U.S. Army Corps of Engineers, Omaha District (Corps) regarding the possible flood hazards that could be incurred by salvage activities, and the development of measures to mitigate any such hazards; (5) prior to beginning salvage activities, submit final salvage plans and consult with the Bismarck Regulatory Office (Bismarck-Corps) regarding its requirements; (6) provide the National Geodetic Survey (NGS) with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the geodetic station markers so that plans can be made for their relocation; and (7) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line that are 50 years old and older, until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

By letter dated June 3, 2005, the State Historical Society of North Dakota states that it concurs with a no historic properties affected determination for the proposed abandonment. Therefore, SEA recommends that the section 106 historic preservation condition be removed.

In letters dated June 27, 2005, and July 6, 2005, DMVW informed SEA of the results of its consultation with NRCS, NDDH, FWS, the county floodplain administrators, Corps, Bismarck-Corps, and NGS, and requests that all environmental conditions be removed. Based on the information contained in the letters, it appears that DMVW has consulted with the above agencies, as required by conditions 1 through 6. However, portions of conditions 1 through 6 also specify measures to be taken during salvage activities, which are yet to be conducted. Therefore, SEA does not recommend removal of conditions 1 through 6. It should be noted that conditions 1 through 6 are self-executing conditions. As such, they do not require further action by SEA prior to fulfillment, and no further Board action is required after DMVW complies with the remaining conditions.

Accordingly, the proceeding will be reopened and only the previously imposed historic preservation condition will be removed.

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 section 106 historic preservation condition imposed in the May 2005 decision is removed. Conditions 1 through 6 imposed in the May 2005 decision remain in effect.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary