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SERVICE DATE - AUGUST 6, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 35X)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--ABANDONMENT
EXEMPTION--IN MACOMB COUNTY, MI

Decided: August 4, 1998

Grand Trunk Western Railroad Incorporated (GTW) filed a notice of exemption under 49 CFR 1152-Subpart F--Exempt Abandonments to abandon a 19.08-mile line of its railroad on the Romeo Subdivision between Richmond and Washington from milepost 0.42 to milepost 19.50 in Macomb County, MI. Notice of the exemption was served and published in the Federal Register on July 10, 1998 (63 FR 37445-46). The exemption is scheduled to become effective on August 9, 1998.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 22, 1998. In the EA, SEA states that the Michigan State Historic Preservation Office (SHPO) states that it may need additional information to complete its evaluation of the potential impact of this project on historic resources. Therefore, SEA recommends that a condition be imposed requiring GTW to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA also states that the National Geodetic Survey (NGS) has identified numerous geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring GTW to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

In the EA, SEA concluded that the right-of-way may be suitable for other public use following abandonment in this proceeding. By petition filed July 23, 1998, the Macomb County Parks and Recreation Commission (Macomb County) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, so that it could negotiate with GTW for acquisition of the right-of-way for use as a trail.¹

¹ The July 10 notice provided for trail use/rail banking requests to be filed by July 20, 1998, and for requests for public use condition to be filed by July 30, 1998.

Macomb County requests that GTW be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that GTW be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption.

By reply filed July 31, 1998, GTW declines to negotiate with Macomb County regarding the trail use request but does not object to the imposition of a public use condition under the terms described by Macomb County. GTW also states that it is willing to negotiate with Macomb County for sale of the right-of-way proposed for abandonment. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board has no authority to issue a NITU here. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

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 Trails, 2 I.C.C.2d at 609.² 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). Macomb County has satisfied these requirements and, therefore a 180-day public use condition will be imposed commencing with the effective date of the exemption. Macomb County states that it needs the full 180-day period because it has not had an opportunity to commence negotiations with GTW. GTW may remove tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, trestles, culverts, and tunnels intact during that period. 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 appropriate for public purposes.

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. The request for issuance of a notice of interim trail use is denied.
3. The request for imposition of a public use condition is granted. The exemption of the abandonment of the 19.08 mile segment is subject to the condition that GTW leave intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not track ties and signal equipment), for a period of 180 days from the August 9, 1998 effective date of the

² Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

abandonment exemption (until February 5, 1999), to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. The exemption of the abandonment is also subject to the conditions that GTW: (a) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (b) consult with the National Geodetic Survey and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary