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SERVICE DATE - DECEMBER 31, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 43X)

SOO LINE RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN ST. LOUIS COUNTY, MN

Decided: December 30, 1997

Soo Line Railroad Company (Soo) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 3.0+-mile line of railroad known as the West Duluth Line, between milepost 465.43+ and milepost 468.43+ in West Duluth, in St. Louis County, MN. The notice was served and published in Federal Register on December 2, 1997 (62 FR 63747-48). The exemption is scheduled to become effective on January 1, 1998.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served December 11, 1997. In the EA, SEA indicates that the Minnesota Department of Natural Resources (MDNR) has identified the southern end of the project area as an important fish and wildlife habitat. In addition, the project is close to the St. Louis River estuary shoreline. Therefore, SEA recommends that a condition be imposed requiring Soo to consult with the MDNR prior to engaging in any salvage activities on the line.

SEA further states that the National Geodetic Survey (NGS) has identified two geodetic markers that may be affected by the abandonment. NGS states that it must be notified 90 days in advance to plan for relocation of the two geodetic station markers. Therefore, SEA recommends that a condition be imposed requiring Soo to consult with the NGS and provide NGS with 90 days' notice prior to engaging in salvage activities to plan for relocation of the two geodetic station markers.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed December 11, 1997, the St. Louis & Lake Counties Regional Railroad Authority (Commenter), a political subdivision and local government unit of Minnesota filed 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 for a public use condition under 49 U.S.C. 10905, so that it could negotiate with Soo for use of the line as a recreational trail. Commenter requests that Soo be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, along the right-of-way, except for public use on reasonable terms, and that Soo be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption.

In a facsimile submission received on December 24, 1997, Soo initially stated that it did not oppose imposition of the requested public use condition. In a supplemental reply by facsimile received on December 29, 1997, Soo stated that it is currently negotiating the sale of the right-of-way with the City of Duluth (City) for future trail use. Soo also stated that Commenter is aware of these negotiations, is in favor of the public acquisition, and has expressed a willingness to withdraw its trail use and public use requests upon execution of an agreement between the City and Soo (an event that Soo expects will occur within the next two weeks). Soo thus declined to enter into negotiations with Commenter as to its trail use request. In this latest submission, Soo also opposed imposition of a public use condition. Because 16 U.S.C. 1247(d) permits only voluntary negotiations for interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment--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. 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). Commenter has satisfied these requirements, but it appears that a full 180-day period for the public use condition is not necessary. To provide time for the anticipated completion of negotiations with the City, a 60-day public use condition will be imposed.¹ Soo may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, 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 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, as discussed in this decision.

¹ Because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, should a resolution not be reached through negotiations within the 60-day period, Commenter may request an extension of up to 120 additional days for the public use condition.

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4. The exemption of the abandonment of the line described in this decision is subject to the conditions that Soo shall: (a) consult with the MDNR prior to engaging in any salvage activities on the line; (b) consult with the NGS and provide NGS with 90 days' notice prior to engaging in salvage activities to plan for relocation of the two geodetic station markers; and (c) leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 60 days from the January 1, 1998 effective date (until March 2, 1998), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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