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SERVICE DATE – JUNE 8, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 391 (Sub-No. 11X)

RED RIVER VALLEY AND WESTERN RAILROAD COMPANY—
ABANDONMENT EXEMPTION—IN CASS COUNTY, N.D.

Decided: June 7, 2022

Red River Valley & Western Railroad Company (RRVW) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 2.29-mile rail line extending from milepost 9.36 to milepost 11.65 (at Horace, N.D.) in Cass County, N.D. (the Line). Notice of the exemption was served and published in the Federal Register on May 10, 2022 (87 Fed. Reg. 28,097). The exemption is scheduled to become effective on June 9, 2022.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on May 13, 2022, recommending that two conditions be imposed on any decision granting abandonment authority.

First, OEA stated that RRVW submitted a historic report and served the report on the State Historical Society of North Dakota (the State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c), and noted that because the SHPO had not yet commented, OEA had not had an opportunity to consider the SHPO's opinion before determining if the rail line may be eligible for listing on the National Register of Historic Places (National Register). Accordingly, OEA recommended a condition requiring that RRVW retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way, that are eligible for listing or listed in the National Register and not file its consummation notice until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA), has been completed and the Board has removed this condition.

Second, OEA stated that RRVW notified the North Dakota Public Service Commission (PSC) by letter requesting comments and included a copy of the preliminary environmental and historic report. PSC responded by letter that it would require further consultation to ensure compliance with North Dakota Century Codes related to sale or transfer of the real property and proposed salvage activities. Accordingly, OEA recommended a condition requiring RRVW to consult with PSC regarding any potential compliance requirements.

OEA issued its Final Environmental Assessment (Final EA) on June 3, 2022, indicating that one new comment was received. Specifically, RRVW submitted a letter to PSC dated

May 27, 2022, addressing PSC's concerns as part of the consultation process. In the Final EA, OEA concludes that, because it recommended a self-executing consultation condition in the Draft EA, no additional mitigation is recommended. OEA continues to recommend that the two conditions previously recommended in the Draft EA be imposed.

Based on OEA's analysis and recommendation, the two conditions recommended in the Final EA will be imposed.

This decision, and the proposed abandonment if implemented as conditioned, 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 notice served and published in the Federal Register on May 10, 2022, exempting the abandonment of the Line described above is subject to the following conditions:¹

(a) RRVW shall retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA has been completed. RRVW shall report back to OEA regarding any consultations with the SHPO, Tribal Historic Preservation Office (if on tribal lands), and any other Section 106 consulting parties that have been identified and the public. RRVW may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

(b) Prior to the commencement of any abandonment-related salvage activities, RRVW shall consult with PSC to determine any compliance requirements related to the potential sale or transfer of the real property and the extent of salvage.

3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

¹ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with the conditions set forth below is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.