

SERVICE DATE – JUNE 29, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 31874

SOUTH DAKOTA RAILWAY COMPANY—NOTICE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE

Digest:¹ The Board denies a request from the National Association of Reversionary Property Owners to terminate a notice of interim trail use on a segment of rail line owned by the State of South Dakota.

Decided: June 29, 2022

BACKGROUND

The history of the rail line at issue here has been described in detail in prior decisions in this docket. Briefly, in 1980, the State of South Dakota (State) acquired the Napa-Platte Line, extending from milepost 0.0, at a point known as Napa Junction, S.D., to milepost 83.3 in Platte, S.D. (the Line). See S.D. Ry.—Modified Rail Certificate, FD 31874, slip op. at 1 (ICC served May 30, 1991); see also Ogilvie, Tr. of the Prop. of Chi., Milwaukee, St. Paul & Pac. R.R.—Aban.—in S.D., Iowa & Neb., AB 7 (Sub-No. 88), slip op. at 15 (ICC served May 14, 1980). Thereafter, the State leased the Line to the Napa-Platte Regional Railroad Authority and the Line was operated by sublessees pursuant to modified certificates of public convenience and necessity. See Napa-Platte Reg'l R.R. Auth.—Modified Rail Certificate, FD 35026, slip op. at 1-2 (STB served June 14, 2007).

In May 2007, the South Dakota Department of Transportation (SDDOT), on behalf of the State, filed a notice of intent to terminate service over the Line under a modified certificate that was obtained by the South Dakota Railway Company (S.D. Ry.) in 1991. See S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate (July 2007 Ord.), FD 31874, slip op. at 1 (STB served July 17, 2007). Concurrently, the South Dakota Railroad Board (SDRB), a political subdivision of the State, filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), for the segment of the Line between milepost 54.5 in Ravinia, S.D., and milepost 83.3 in Platte (Ravinia-Platte Segment). July 2007 Ord., FD 31874, slip op. at 1. In July 2007, the Board granted SDDOT's request to terminate service under S.D. Ry.'s modified certificate and issued a NITU for the Ravinia-Platte Segment, with SDRB as the potential trail sponsor. Id. at 2.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

On December 8, 2021, SDRB filed a request to vacate the NITU over the end of the Ravinia-Platte Segment from milepost 80.8 to milepost 83.3 and to issue a replacement NITU for the remaining portion of the segment between milepost 54.5 and milepost 80.8. (SDRB Notice 3, Dec. 8, 2021.) By decision served on March 4, 2022, the Board granted the State's request by vacating the July 2007 NITU and issuing a replacement NITU over the Ravinia-Platte Segment from milepost 54.5 to milepost 80.8.

On March 7, 2022, the National Association of Reversionary Property Owners (NARPO) filed a request "to terminate the complete NITU" in this docket. (NARPO Letter 1, Mar. 7, 2022.) NARPO states that it searched various records, including Board records, and found "no record of a NITU being issued for the rail line leading to Ravinia." (*Id.*) NARPO also asserts that no "modern records" show whether the rail line to Ravinia ever existed. (*Id.* (recognizing that "Google Maps does show the outline of a rail line coming from somewhere southeast of Ravinia").) NARPO argues that, if no rail line leads to Ravinia, the Ravinia-Platte Segment is not connected to the national rail network and no NITU can be issued for that segment. (*Id.*)

On March 18, 2022, SDRB filed a reply in opposition to NARPO's request. SDRB states that a record of the NITU in this proceeding is available through a routine search of the public record. (SDRB Reply 1, Mar. 18, 2022.) SDRB argues that a rail line leading to Ravinia exists and is connected to the national rail network, as identified in its December 8 notice. (*Id.* at 1-2; see SDRB Notice, Ex. A, Dec. 8, 2021.) According to SDRB, at milepost 0.0, the Line connects to a rail line owned by the BNSF Railway Company (BNSF), which is connected to the national rail network. (SDRB Reply 2, Mar. 18, 2022 (citing Official South Dakota Rail Map, S.D. Dep't of Transp., <https://dot.sd.gov/media/documents/railmap.pdf> (last visited Apr. 6, 2022)).)

Later that day, NARPO filed a surreply asserting that no NITU exists on the segment of the Line between milepost 0.0 and milepost 54.5 (Napa-Ravinia Segment) and that "the modified certificate has been terminated for that line segment." (NARPO Letter 2, Mar. 18, 2022.) According to NARPO, there are no tracks on the Line, "all but three small bridges [were] removed decades ago," and the right-of-way is being used for farming. (*Id.*) Therefore, NARPO argues, the Line is not connected to the national rail network and the Board should not have issued a NITU for the Ravinia-Platte Segment. (*Id.*)

SDRB responded to NARPO's surreply on March 24, 2022.² SDRB asserts that the tracks on the Napa-Ravinia Segment have not been removed and that the Dakota Southern Railway Company (Dakota Southern) currently holds a modified certificate to operate over that segment.³ (SDRB Reply 2, Mar. 24, 2022 (citing Dakota S. Ry.—Modified Certificate of Pub. Convenience & Necessity—Yankton, Bon Homme, & Charles Mix Cnty., S.D., FD 36086 (STB served Jan. 25, 2017)).) For those reasons, and because the State "has no intention of

² In the interest of compiling a complete record, the Board will accept NARPO's surreply and SDRB's March 24, 2022 reply into the record. See, e.g., City of Alexandria, Va.—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

³ SDRB notes that its March 18, 2022 reply incorrectly stated that Dakota Southern holds a modified certificate to operate over the railbanked Ravinia-Platte Segment. (SDRB Reply 2, Mar. 24, 2022; see SDRB Reply 2 n.1, Mar. 18, 2022.)

abandoning” the segment, SDRB argues that the Napa-Ravinia Segment remains part of the national rail network. (SDRB Reply 2, Mar. 24, 2022.)

DISCUSSION AND CONCLUSIONS

The Trails Act permits a railroad to “preserve established railroad rights-of-way for future reactivation of rail service” while allowing the right-of-way to be transferred to a third-party sponsor for interim use as a trail. 16 U.S.C. § 1247(d); see Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996). The statute expressly provides that “such interim use shall not be treated . . . as an abandonment of the use of such rights-of-way for railroad purposes.” 16 U.S.C. § 1247(d); see Preseault v. ICC, 494 U.S. 1, 6 (1990). Instead, the right-of-way remains intact and available for future railroad use (i.e., “railbanked”), which relieves the railroad of the liability and financial responsibility for the right-of-way during the period of interim trail use but permits the railroad (or authorized rail service provider) to reassert control over the right-of-way to restore service on the line in the future. See Birt, 90 F.3d at 583.

The Board’s role under the Trails Act is limited. See Norfolk & W. Ry.—Aban. Exemption—Between Kokomo & Rochester in Howard, Miami, & Fulton Cntys., Ind., AB 290 (Sub-No. 168X), slip op. at 5 (STB served May 4, 2005). Once a trail condition has been imposed, “the Board’s chief concern . . . is that the statutory railbanking conditions not be compromised and that nothing occur that would preclude a railroad’s right to reassert control over the right-of-way at some future time to revive active service.” Sunflower Rails-Trails Conservancy, Inc.—Pet. for Declaratory Ord.—Sale of Railbanked Right-of-Way, FD 36034, slip op. at 4 (STB served Feb. 23, 2017) (citing Idaho N. & Pac. R.R., 3 S.T.B. 50 (Mar. 20, 1998)); see also Jie Ao—Pet. for Declaratory Ord., FD 35539, slip op. at 6 (STB served June 6, 2012) (finding an adverse possession claim to a portion of railbanked property was preempted because the loss of the railroad right-of-way would preclude reactivation of service on the line). A railbanked line remains part of the national rail network and subject to the Board’s jurisdiction. See Sunflower Rails-Trails Conservancy, FD 36034, slip op at 4.

Here, NARPO has failed to show that the Napa-Ravinia Segment has been severed from the national rail network such that the State would be unable to reinstitute rail service over the railbanked Ravinia-Platte Segment in the future. The railbanked Ravinia-Platte Segment connects to the Napa-Ravinia Segment, which in turn connects to a BNSF rail line. (See SDRB Notice, Ex. A, Dec. 8, 2021.) Currently, Dakota Southern is authorized to operate over the Napa-Ravinia Segment pursuant to a modified certificate. Dakota S. Ry.—Modified Certificate of Pub. Convenience & Necessity—Yankton, Bon Homme, & Charles Mix Cntys., S.D., FD 36086. Although NARPO asserts that “[o]n 7/16/2007 the STB allowed SDDOT to terminate if [sic] modified certificate from MP 0.0 to MP 83.3,” the July 2007 Order only terminated service under S.D. Ry.’s modified certificate, not under Dakota Southern’s modified certificate. July 2007 Ord., FD 31874, slip op. at 2. The decision also explicitly stated that operations on the non-railbanked portions of the Line between milepost 0.0 and milepost 54.5 (i.e., the Napa-Ravinia Segment) would continue. Id. at 2 n.3; see Napa-Platte Reg’l R.R. Auth.—Modified Rail Certificate, FD 35026; Napa-Platte Reg’l R.R. Auth.—Lease & Operation Exemption—Dakota Short Line Corp., FD 35025 (STB served May 31, 2007). Thus, there is no

merit to NARPO's argument that the Board "approved termination of the only part of the rail line that was connected to the National Rail System." (NARPO Letter 2, Mar. 18, 2022.)

Additionally, NARPO asserts that "[l]ooking at Google Maps . . . there are no tracks" on the Napa-Ravinia Segment. (NARPO Letter 2, Mar. 18, 2022.) However, SDRB states that "tracks have not been removed" from the Napa-Ravinia Segment and that the State does not intend to abandon that segment. (SDRB Reply 1, Mar. 24, 2022.) In any event, even if NARPO is correct that tracks have been removed from the Napa-Ravinia Segment, removal of tracks alone would not sever the Line from the national rail network for purposes of Board jurisdiction. See Zorzi—Pet. for Declaratory Ord., FD 36016, slip op. at 6 (STB served Jan. 31, 2017) ("Removal of tracks alone does not mean that a line is severed from the national rail network."); Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 6-7 (STB served June 4, 2008).

For these reasons, the Board finds that the Line has not been severed from, and remains part of, the interstate rail network. Therefore, NARPO's request to revoke the NITU issued on March 4, 2022, will be denied.

It is ordered:

1. NARPO's request to revoke the NITU issued on March 4, 2022, is denied.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.