

National Association of Reversionary Property Owners (NARPO)

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Cynthia Brown Chief, Section of Administration Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Docket No. AB 57-61 X Soo Line Railroad Company Abandonment in Racine
County, Wisconsin

Dear Ms. Brown:

NARPO is responding to the November 9, 2018 filing date of a letter from the Wisconsin Department of Natural Resources (WDNR) asking for an extension of a NITU. NARPO noticed that this request and previous requests for a NITU extension had the words "interim highway" as a reason for establishing an interim trail-see an excerpt from the request letter below from the previous request for a NITU extension filed on May 24, 2018 and approved by the STB on June 5, 2018.

Please be advised that Soo Line Railroad does not object to the request for a 180-day extension of time relating to the negotiations for establishing an interim trail use for interim highway, bicycle, pedestrian and other trail purposes, and rail banking, made by the Wisconsin Department of Natural Resources ("WisDNR") in its Petition for Extension of Negotiating Period as was filed on May 25, 2018. *emphasis added*

The wording of 49 CFR 11.52.29 does not have the words "interim highway" as an reason for a NITU.

The STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY SIGNED BY THE WDNR DOES NOT CONTAIN ANY LANGUAGE REFERRING TO INTERIM HIGHWAY USE. THE STATUTE 16 USC 1247(D) DOES NOT CONTAIN ANY LANGUAGE LIKE INTERIM HIGHWAY USE.

SO HOW DOES THE OFFICE OF PROCEEDINGS ALLOW A NITU EXTENSION TO BE DONE WITH THIS LANGUAGE IN THE OFFICE OF PROCEEDINGS 6/5/2018 DECISION TO EXTEND THE NITU ANOTHER 180 DAYS? THE STB ORIGINAL DECISION AUTHORIZING A NITU ON 3/17/2014 DOES NOT CONTAIN ANY LANGUAGE ABOUT “INTERIM HIGHWAY” USE—SEE AN EXCERPT BELOW.

Because WisDNR’s request complies with the requirements of 49 C.F.R. § 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat’l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, WCL may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It appears the WDNR has added the “interim highway” language so they could make a highway out of the abandoned railroad right of way in AB 57-61 which is not what Congress or the ensuing ICC and STB regulations meant in 16 USC 1247(d).

The STB should rescind the latest NITU extension and vacate the NITU as a sanction against WDNR for violating STB rules and statutes.

Sincerely yours,

Dick Welsh, Executive Director, NARPO

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Signed Dick Welsh for NARPO dated November 13, 2018