

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 57 (Sub-No. 61X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN RACINE
COUNTY, WIS.

Decided: January 31, 2019

On January 28, 2014, Soo Line Railroad Company, d/b/a Canadian Pacific, (Soo Line) filed a verified notice of exemption under 49 C.F.R. pt. 1152 Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon 10.63 miles of rail line approximately between milepost 7.8 and milepost 18.43 in Racine County, Wis. (the Line). Notice of the exemption was served and published in the Federal Register on February 14, 2014 (79 Fed. Reg. 9042). The exemption was scheduled to become effective on March 19, 2014.

On February 27, 2014, the Wisconsin Department of Transportation (WDOT) petitioned the Board to issue a notice of interim trail use (NITU) to allow the Wisconsin Department of Natural Resources (WDNR) to negotiate with Soo Line to acquire the Line for use as a trail under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ In its petition, WDOT listed “interim highway” use among the potential trail uses for the right-of-way, and referenced a Wisconsin statute that allows trails to be incorporated within highway rights-of-way. (WDOT Pet. 2.) Also included was a statement of WDNR’s willingness to assume financial responsibility for the right-of-way and an acknowledgment that the right-of-way is subject to possible future reconstruction and reactivation for rail service. In a letter filed on March 13, 2014, Soo Line consented to negotiate with WDNR for interim trail use.

On March 18, 2014, the Board issued a NITU, which gave the parties a 180-day period to negotiate a trail use agreement. The Board later granted multiple extensions of the negotiating period at the request of WDNR and Soo Line. The Board most recently extended the negotiating period until November 12, 2018. On November 9, 2018, WDNR requested a further extension of the NITU negotiating period. On November 13, 2018, Soo Line submitted a letter reaffirming

¹ “The Trails Act authorizes owners of railroad rights-of-way to enter into agreements with entities, called sponsors, under which the sponsors agree to convert the right-of-way into recreational trails, so long as they agree to reserve to the railroad the right to return the right-of-way to railroad use” and the sponsors agree to “‘assume full responsibility . . . for any legal liability arising out of such . . . use’ or agree to indemnify the railroad for ‘any potential liability’ and assume responsibility for the payment of all taxes assessed with respect to the right-of-way.” Md. Transit Admin. v. STB, 700 F.3d 139, 141 (4th Cir. 2012) (quoting 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29(a)).

its consent to continue negotiations. On the same day, the National Association of Reversionary Property Owners (NARPO) filed a letter in response to WDOT's extension request, noting that neither the Board's regulations nor the Trails Act refer to "interim highway" use and stating that the Board should "rescind the latest NITU extension and vacate the NITU." (NARPO Comment 1-2.)

The Board's authority to impose trail use conditions is limited because its role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and the interim trail use program is voluntary and consensual between the railroad and the trail sponsor, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). In fulfilling its role under the Trails Act, therefore, the Board does not parse the meaning and compatibility of potentially applicable state laws before authorizing NITU negotiations. See, e.g., Md. Transit Admin., 700 F.3d at 145-46 (affirming the Board's limited role under the Trails Act, which did not require an analysis of state immunity law before the Board could act on a petitioner's NITU request).

Here, WDNR has petitioned for, and Soo Line has consented to, an extension of time to negotiate interim trail use of the railroad right-of-way. The Board will grant an extension of the NITU negotiating period until May 11, 2019. In doing so, the Board cannot and does not exceed the scope of its authority under the Trails Act. Accordingly, the NITU granted by the Board does not authorize any use of the Line that would not be "consistent with interim trail use and rail banking," 49 C.F.R. § 1152.29(d)(1), and any approvals of WDNR's previous extension requests that refer to "interim highway" use should not be construed as doing so.

It is ordered:

1. WDNR's petition for an extension of the NITU negotiating period until May 11, 2019, is granted.
2. NARPO's request to vacate the NITU is denied.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.