

SERVICE DATE - AUGUST 6, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-850X

ST. CROIX VALLEY RAILROAD COMPANY—ABANDONMENT AND
DISCONTINUANCE OF SERVICE EXEMPTION—IN PINE AND KANABEC
COUNTIES, MN

Decided: August 5, 2003

By decision served on July 7, 2003 (July 7 decision), the Board granted St. Croix Valley Railroad Company (SCXY) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to: (1) abandon its rail easement over a line of The Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 58.3 at Mora Junction (Brook Park) and milepost 47.6 at Mora, a distance of 10.7 miles, and (2) discontinue rail service pursuant to overhead trackage rights over a rail line of BNSF between Hinckley and Mora Junction (Brook Park), a distance of 8.2 miles, in Pine and Kanabec Counties, MN, subject to environmental and standard employee protective conditions. The exemption is scheduled to become effective on August 6, 2003.

On June 30, 2003, The Pine County Railroad Authority (PCRA) late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29, and for a public use condition under 49 U.S.C. 10905 and 49 CFR 1152.28,¹ for the 2.5-mile portion of the right-of-way between milepost 58.3 at Mora Junction and the Pine County and the Kanabec County Line. PCRA requests that SCXY be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that SCXY be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels for a 180-day period from the effective date of the abandonment exemption.

¹ Notice of the filing was served and published in the Federal Register on April 8, 2003 (68 FR 17150). The notice provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 would be due no later than April 28, 2003. The Board's policy is to accept filings after the due date when good cause is shown. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997). Because there is no indication that PCRA's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

PCRA states that the time period is needed to assemble or review title information, complete a trail plan, and begin discussions with Kanabec County concerning appropriate use.

PCRA also submitted a statement of willingness to assume financial responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In response, SCXY indicated its willingness to negotiate with PCRA.²

Because PCRA's request complies with the requirements of 49 CFR 1152.29 and SCXY is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, SCXY may fully abandon the line, subject to the conditions contained in the July 7 decision. See 49 CFR 1152.29 (d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes³ for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.⁴

To justify a public use condition, a party must set forth: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because PCRA has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the August 6, 2003 effective date of the exemption.

² SCXY states that because it holds the common carrier obligation concerning the line, it appears to be the proper party to negotiate for trail use.

³ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on May 16, 2003, indicating that the right-of-way may be suitable for other public use following abandonment.

⁴ In view of SCXY's representation that BNSF owns the underlying real property, the opportunity for PCRA or others to negotiate the acquisition of the line for public use outside of the context of interim trail use might not be available.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, SCXY must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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 suitable for public purposes, including trail use. Therefore, with respect to the public use condition, SCXY is not required to deal exclusively with the PCRA, but may engage in negotiations with other interested persons.

As conditioned, this decision and notice 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. Upon reconsideration, the decision served on July 7, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below for that portion of the right-of-way between milepost 58.3 at Mora Junction and the Pine County and the Kanabec County Line and subject to the condition that SCXY leave intact the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track material), for that portion of the right-of-way between milepost 58.3 at Mora Junction and the Pine County and the Kanabec County Line, for a period of 180 days from the effective date of the July 7, 2003 decision, to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by February 2, 2004, interim trail use may be implemented. If no agreement is reached by that time, SCXY may fully abandon the line, provided all outstanding conditions are met.

7. This decision and notice is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary