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SERVICE DATE - FEBRUARY 26, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Finance Docket No. 33398 (Sub-No. 1)

SAMMAMISH TRANSPORTATION COMPANY—NOTICE OF INTERIM
TRAIL USE AND TERMINATION OF MODIFIED CERTIFICATE

Decided: February 20, 1998

In Sammamish Transportation Company—Modified Rail Certificate, STB Finance Docket No. 33398 (STB served June 12, 1997), Sammamish Transportation Company (STC) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 83.47 miles of rail line owned by the South Dakota Department of Transportation (SDDOT) extending between milepost 562.53 near Kadoka, SD, and milepost 646.0 near Caputa, SD.

On August 20, 1997, STC filed a notice of its intent to terminate service under the modified certificate,¹ as well as a joint request with SDDOT for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the entire line. SDDOT has submitted a statement of willingness to assume financial responsibility for management of the right-of-way as required by 49 CFR 1152.29, and acknowledged that use of the right-of-way as a trail is subject to possible future reconstruction and reactivation for rail purposes.² The parties also indicate that they have already reached a rail banking agreement, contingent upon issuance of a NITU.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. Moreover, the Board has jurisdiction to issue a NITU in a proceeding where a notice is filed under 49 CFR 1150.24 to terminate operations

¹ Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate.

² The modified certificate describes the line as extending between milepost 562.53 near Kadoka and milepost 646.0 near Caputa while the notice of termination describes the line as extending between milepost 562.23 near Kadoka and milepost 646.0 near Caputa. In addition, the statement of willingness to assume financial responsibility describes the line as extending a distance of 73.48 miles between milepost 562.52 near Kadoka and milepost 646.0 near Caputa. Unless notified to the contrary, the NITU request will be construed as covering the line segment as described in the modified certificate, i.e., between milepost 562.53 near Kadoka and milepost 646.0 near Caputa.

under a modified certificate. See Wisconsin and Calumet Railroad Company, Inc.—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 30724 (Sub-No. 1) (ICC served Aug. 8, 1989).

Because the parties have met the requirements of 49 CFR 1152.29, a NITU will be issued covering the above-described line. Although the parties indicate that they have already reached a rail banking agreement, they will be given the full 180-day period prescribed below to finalize or modify any such agreement. If they reach (or have reached) a mutually acceptable final agreement, no further Board action is necessary. If no agreement has been reached by the end of the 180-day period, the line may be fully abandoned. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for a NITU under 49 U.S.C. 1247(d) is accepted.
2. 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, 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.
3. 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.
4. If interim trail use is implemented and the user subsequently seeks 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.
5. If an agreement for interim trail use/rail banking has been reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned.

STB Finance Docket No. 33398 (Sub-No. 1)

6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary