

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 allows a railbanked right-of-way in South Dakota to be shortened and clarifies that the removed portion of that right-of-way is no longer part of the interstate rail network.

Decided: March 3, 2022

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), was authorized for abandonment in 1980. See S.D. Ry.—Modified Rail Certificate, FD 31874, slip op. at 1 (ICC served May 30, 1991) (noting that the Line was approved for abandonment by the U.S. District Court for the Northern District of Illinois, Eastern Division (the Court)); 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) (recommending that the Court authorize abandonment).

Before the abandonment was consummated, the Line was acquired by the State of South Dakota (State). See Napa-Platte Reg'l R.R. Auth.—Modified Rail Certificate, FD 35026, slip op. at 1-2 (STB served June 14, 2007); see also Common Carrier Status of States, State Agencies & Instrumentalities, & Pol. Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982).

In 1981, the State leased the Line to the Napa-Platte Regional Railroad Authority. See Napa-Platte Reg'l R.R. Auth., FD 35026, slip op. at 2. Thereafter, the Line was operated by sublessees pursuant to modified certificates of public convenience and necessity, see id., including by the South Dakota Railway Company (SDRC), which obtained a modified certificate to operate the Line in May 1991, S.D. Ry.—Modified Rail Certificate, FD 31874, slip op. at 1-2.

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 SDRC's modified certificate. 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) (noting

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).

SDDOT's claim that SDRC had not exercised its operating rights over the Line since at least December 31, 1994). 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, 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). See July 2007 Ord., slip op. at 1. In the July 2007 Order, the Board granted SDDOT's request on SDRC's behalf to terminate service under the modified certificate, and it issued a NITU for the Ravinia-Platte Segment. Id. at 2.

On December 8, 2021, SDRB filed a request under 49 C.F.R. § 1152.29(d)(2) to vacate the NITU over the end of the Ravinia-Platte Segment from milepost 80.8 to milepost 83.3 (End Segment). (Notice 2.) SDRB states that it will continue to be the trail sponsor for the remaining portion of the Ravinia-Platte Segment between milepost 54.5 and milepost 80.8. (Id.) On that same day, SDRB and SDDOT jointly filed a Record Correction Notice explaining that their 2007 filings in support of the NITU incorrectly represented that the State owned the entire Ravinia-Platte Segment. (Record Correction 1.) According to SDRB and SDDOT, SDDOT recently discovered that, prior to 2007, the State had sold portions of the End Segment and "did not retain sufficient interests in some of the parcels it sold to ensure that rail service could be reinstated" in the future. (Id. at 2.) Additionally, the Record Correction states, portions of the End Segment retained by the State "had been transferred within SDDOT for highway use." (Id.) SDRB and SDDOT submit that their 2007 misstatements were inadvertent and have not impacted rail service because no entity has asked to reinstate service over the Ravinia-Platte Segment. (Id.)

The State has complied with the requirements of 49 C.F.R. § 1152.29(d)(2). Its request to vacate the NITU with respect to the End Segment will be granted and a replacement NITU issued for the remainder of the Ravinia-Platte Segment.

The Board also finds that abandonment has been consummated for the End Segment. See Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008) (explaining that a state line owner that is exempt from abandonment provisions under Common Carrier Status of States may consummate abandonment without regulatory oversight from the Board); see also Pa. Dep't of Transp.—Aban. Exemption—Portion of Valley Branch, AB 373X et al., slip op. at 2, 6 n.18 (ICC served Apr. 29, 1993). The Board considers "the broad spectrum of facts in each case" to determine if a state rail line owner intended to abandon a line. Beaufort R.R., FD 34943, slip op. at 6. The facts in this case show that the State intended to withdraw the End Segment from the national rail system. The State has sold portions of the End Segment, resulting in its inability to reinstate rail service over that segment, and it has transferred portions of the End Segment to SDDOT for highway use. (Record Correction 2); Cf. Burlington N. R.R.—Aban. Exemption—Between Klickitat & Goldendale, Wash., AB 6 (Sub-No. 335X) et al., slip op. at 5 (STB served June 8, 2005) (finding that a trail had not been severed from the interstate rail network because the railroad retained a connection to its main line, which allowed "for the potential reactivation of active rail service"). Accordingly, the State need not seek further Board authority to consummate abandonment of the End Segment.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on July 17, 2007, is vacated.
3. A replacement NITU applicable to the portion of the Ravinia-Platte Segment of the Napa-Platte Line from milepost 54.5 in Ravinia, S.D., to milepost 80.8 in Platte, S.D., is issued.
4. This decision is effective on its service date.

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