

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 927X

BOOT HILL & WESTERN RAILWAY CO., L.C.—ABANDONMENT EXEMPTION—IN
FORD COUNTY, KAN.

Decided: June 23, 2015

On March 16, 2005, Boot Hill & Western Railway Co., L.C. (BHWR), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 15.8-mile line of railroad between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kan. Notice of the exemption was served and published in the Federal Register on April 5, 2005 (70 Fed. Reg. 17,283). By decision served on May 4, 2005, the proceeding was reopened to impose an environmental condition requiring BHWR to notify the U.S. Department of Commerce, National Geodetic Survey (NGS), 90 days prior to conducting salvage activities so that NGS may plan for the possible relocation of 14 geodetic station markers identified on the line. By decision and notice of interim trail use or abandonment (NITU) served on February 13, 2006, the proceeding was reopened and a NITU was issued permitting BHWR to rail bank the right-of-way for interim trail use.¹

On April 24, 2015, BHWR and Boot Hill & Western Railway Holding Co., Inc. (Holding) (jointly, Petitioners) filed a joint motion to substitute Holding for BHWR as interim trail manager. Petitioners state that the substitution of trail managers is related to its concurrently filed notices of exemption.² Petitioners sought approval for Holding to acquire and operate track contiguous to the railbanked rail line, and to acquire the right to reactivate common carrier service on the railbanked rail line. Petitioners also sought approval for Michael Williams to continue in control of Holding upon Holding's acquisition of the assets of BHWR.

Holding has submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in accordance with 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way is subject to possible future

¹ A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. See Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle and Pitkin Counties, Colo., AB 547X, slip op. at 4 n.11 (STB served Oct. 16, 1998).

² See Boot Hill & W. Ry. Holding Co.—Acquis. and Operation Exemption—Boot Hill & W. Ry., FD 35924 (STB served May 8, 2015) and Michael Williams—Continuance in Control Exemption—Boot Hill & W. Ry. Holding Co., FD 35925 (STB served June 3, 2015).

reconstruction and reactivation for rail service. Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, Petitioners' request will be granted.

As conditioned, this decision 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. The NITU served on February 13, 2006, is vacated.
3. A replacement NITU is issued to Holding as the new interim trail sponsor for the line, effective on the service date of this decision and notice.
4. If an interim trail use/railbanking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/railbanking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.
6. 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).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.