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SERVICE DATE – APRIL 19, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 463 (Sub-No. 1X)

ALABAMA RAILROAD CO.—ABANDONMENT
EXEMPTION—IN MONROE COUNTY, ALA.

Decided: April 19, 2013

Alabama Railroad Co. (ALAB) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 7.42 miles of rail line between milepost 655.20 (east of Route 21 at Tunnel Springs) and milepost 662.62 (west of Main Street in Beatrice), in Monroe County, Ala. Notice of the exemption was served and published in the Federal Register on March 21, 2013 (78 Fed. Reg. 17,468). The exemption is scheduled to become effective on April 20, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on March 26, 2013. In the EA, OEA stated that the National Geodetic Survey (NGS) submitted comments stating that four geodetic survey markers are located in the area of the proposed abandonment. Accordingly, OEA recommends that ALAB consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

In addition, OEA stated that the U.S. Fish and Wildlife Service (USFWS) submitted comments stating that the following threatened, endangered, and candidate species are found in the project area: Red Hills salamander, Gopher tortoise, Southern clubshell, and Alabama pearlshell. USFWS further stated that the proposed abandonment would have no impacts on these species if salvage operations are conducted within the right-of-way and there is no disturbance of the stream/creek bottom;¹ to that end, USFWS recommends that ALAB utilize Best Management Practices (BMPs) in order to protect water quality. Accordingly, OEA recommends a condition requiring ALAB to ensure that BMPs are followed during salvage activities.

Comments to the EA were due April 10, 2013. No comments were received. Accordingly, the conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not

¹ OEA notes ALAB's statement in its environmental report that it would not be conducting any in-stream work as part of the planned abandonment and that salvage activities would be conducted within the right-of-way.

significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 22, 2013, the Monroe County Commission (MCC) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with ALAB for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, MCC has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on March 29, 2013, ALAB has indicated its willingness to negotiate with MCC for interim trail use.

Because MCC's request complies with the requirements of 49 C.F.R. § 1152.29 and ALAB is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. 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); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, ALAB may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

MCC also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. MCC asks that ALAB be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that ALAB be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. MCC's justification for its request is that these structures have considerable value for recreational trail purposes. MCC states that the 180-day period is needed to complete a detailed trail plan and to commence negotiations with ALAB.

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

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because MCC has satisfied these requirements, a 180-day public use condition will be imposed, requiring ALAB to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the

corridor (other than tracks, ties, and signal equipment), commencing from the April 20, 2013 effective date of the exemption.

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. Here, however, while both conditions will be imposed at this time, the public use condition will expire on October 17, 2013, while the trail use negotiating period will run 180 days from the service date of this decision and notice until October 16, 2013. If a trail use agreement is reached on a portion of the right-of-way prior to October 16, 2013, ALAB must keep the remaining right-of-way intact for the remainder of the 180-day public use condition 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, ALAB is not required to deal exclusively with MCC, but may engage in negotiations with other interested persons.

As conditioned, this action 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 notice served and published in the Federal Register on March 21, 2013, 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 to permit MCC to negotiate with ALAB for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until October 16, 2013 and to permit public use negotiations as set forth below, for a period of 180 days commencing from the April 20, 2013 effective date of the exemption, until October 17, 2013. The abandonment is also subject to the conditions that ALAB: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and (2) ensure that BMPs are followed during salvage activities.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, ALAB may discontinue service and salvage track and related materials. ALAB shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until October 17, 2013) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking 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/rail banking 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. If an agreement for interim trail use/rail banking is reached by October 16, 2013 for the right-of-way, interim trail use may be implemented. If no agreement is reached, ALAB may fully abandon the line.

9. This decision and notice is effective on its service date.

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