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SERVICE DATE – JUNE 15, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-855 (Sub-No. 1X)¹

A & R LINE, INC.—ABANDONMENT EXEMPTION—
IN CASS AND PULASKI COUNTIES, IN

Decided: June 12, 2009

By decision and notice of interim trail use or abandonment (NITU) served on November 18, 2003, as revised by decision served on March 5, 2004, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by A & R Line, Inc. (A&R) of a line of railroad known as the A&R line.² At the same time, the Board exempted the discontinuance of service by Toledo, Peoria & Western Railway Corporation (TP&W) over the same line. The line extends from milepost 0.0W at Kenneth to the end of the line at milepost 21.0W at Winamac, a distance of 21.0 miles in Cass and Pulaski Counties, IN. The exemption was granted subject to environmental and employee protective conditions, and conditions requested by Indiana Trails Fund, Inc. (ITF) for rail banking/interim trail use under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for public use. The exemption permitting abandonment of the 21-mile line became effective, subject to those conditions, on the April 22, 2004 service date of the decision terminating the offer of financial assistance process.³ In this proceeding, the Board is granting the request to vacate the existing NITU issued to ITF and to issue a replacement NITU authorizing Friends of the Panhandle Pathway, Incorporated (FPP) as the new interim trail use proponent for the rail line.

¹ Prior decisions in this proceeding also have embraced Toledo, Peoria & Western Railway Corporation—Discontinuance of Service Exemption—in Cass and Pulaski Counties, IN, STB Docket No. AB-847 (Sub-No. 2X).

² The March 5, 2004 decision revised the November 18, 2003 decision and NITU to correct the description of the subject line to cover 21 miles of rail line, rather than 15.9 miles as the petitioners originally had indicated.

³ By a decision served on April 13, 2004, the Board denied a request filed by Pulaski County asking that the Board require the railroad or not-for-profit interim trail user to be bonded or to escrow funds and be obligated for clean-up costs.

By letter dated May 29, 2009, ITF and FPP jointly request that the Board substitute FPP as the interim trail use proponent with respect to the 21-mile line. By letter dated May 15, 2009, TP&W supports the request to substitute FPP as the interim trail use proponent.⁴

FPP has submitted the required statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29. FPP also acknowledges that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. Accordingly, the request will be granted.

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. The NITU served on November 18, 2003, as revised by decision served on March 5, 2004, is vacated.
3. A replacement NITU applicable to FPP as interim trail user is issued, effective on the service date of this decision and notice, subject to any environmental conditions that remain in effect.
4. The new trail user is required 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.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
6. If the new trail 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.

⁴ According to ITF and FPP, ITF entered into a trail use agreement with A&R in 2005 and acquired the right-of-way for trail use. TP&W became the successor to A&R, both of which were part of the RailAmerica, Inc. family of carriers.

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

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

Anne K. Quinlan
Acting Secretary