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SERVICE DATE - MARCH 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-397 (Sub-No. 4X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN TULARE COUNTY, CA

Decided: March 21, 1997

Tulare Valley Railroad Company (TVR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 5 miles of railroad from milepost 15.1 at Tulare, to milepost 20+1191.3 at Loma, in Tulare County, CA. Notice of the exemption was served and published in the Federal Register on August 20, 1996 (61 FR 43117). The exemption was scheduled to become effective on September 19, 1996. On September 19, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for the City of Tulare (City) to negotiate an interim trail use/rail banking agreement with TVR for the right-of-way involved in this proceeding. The negotiation period under the NITU expired March 18, 1997.¹

On March 10, 1997, American Trails Association, Inc. (ATA), a new negotiation party, filed a statement for substitution of interim trail operator in lieu of the City pursuant to 49 CFR 1152.29.² ATA request that the NITU be extended for an additional 30 days and anticipates that it will reach an agreement with TVR for interim trail use pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). ATA submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By reply filed March 19, 1997, TVR confirmed that it has been unable to reach an agreement with the City on terms of a trail use/rail banking agreement and that there is no prospect that an agreement will be reached prior to the expiration of the negotiation period. The railroad also states that it has not consummated the abandonment and supports a 180-day extension of the negotiation

¹ The September 17 decision imposed a 180-day public use condition requiring TVR to leave the right-of-way intact, including bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days from the September 19, 1996 effective date of the exemption (i.e., until March 18, 1997). The decision also imposed an endangered species condition under section 7 of the Endangered Species Act, 16 U.S.C. 1536. That condition was removed by decision served October 18, 1996.

² ATA states that no agreement has been reached between TVR and the City.

period.³

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way⁴ and the carrier is willing to enter into negotiations. Inasmuch as TVR has not consummated the abandonment and is willing to negotiate with ATA for the right-of-way, a NITU will be issued, with the trail use negotiation period running until September 13, 1997. If no agreement is reached during this period, TVR may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(1).

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on August 20, 1996, is modified to the extent necessary to implement interim trail use/rail banking as set forth below until September 13, 1997.
3. 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, 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.
4. 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.
5. If interim trail use is implemented, and subsequently the 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 specific date.
6. If an agreement for interim trial use/rail banking is reached by September 13, 1997, interim trail use may be implemented. If no agreement is reached by that time, TVR may fully abandon the line.

³ However, TVR stated that it also supports a 180-day public use extension. Under 49 U.S.C 10905, the Board's public use jurisdiction expires 180 days from the effective date of the decision approving or exempting the abandonment. The public use condition imposed in the September 17 decision was for the maximum period permitted by statute. See 49 CFR 1152.28(b); and Rail Abandonments--Public Use Conditions--Revision, 8 I.C.C.2d 392, 395-398 (1992).

⁴ See Rail Abandonment--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings

Vernon A. Williams
Secretary