

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 389 (Sub-No. 1X)

GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL  
RAILROAD CO., INC. — ABANDONMENT AND DISCONTINUANCE  
EXEMPTION — BETWEEN ALBANY AND DAWSON, IN TERRELL,  
LEE, AND DOUGHERTY COUNTIES, GA.

Decided: January 20, 2015

By decision and notice of interim trail use or abandonment (NITU) served on August 16, 1996 (August 1996 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903, the abandonment filed by Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS) on May 20, 1994, of a 13.62-mile line of railroad between milepost 86.5 at Albany, Ga., and milepost 72.88 at Sasser, Ga. (the Line), subject to trail use, public use, a historic preservation condition, environmental, and standard employee protective conditions. The August 1996 decision authorized Chehaw Park Authority (Chehaw) to negotiate with GGS for an interim trail use/rail banking agreement for the 13.62-mile line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.<sup>1</sup> Subsequently, Rails To Trails Conservancy (RTC) was substituted for Chehaw as the negotiating party, and in October 1997, the parties advised the Board that they had reached an interim trail use agreement.

In the meantime, GGS's parent, RailTex, Inc. (RailTex), had transferred the line and various other rail lines, from a rail subsidiary that it controlled, South Carolina Central Railroad Co., Inc. (SCCR), to Georgia Southwestern Railroad, Inc. (GSWR), another RailTex subsidiary. See RailTex, Inc.—Corporate Family Transaction Exemption—Ga. & Ala. Lines, S.C. Cent. R.R. & Ga. Sw. R.R., FD 32682 (ICC served Apr. 20, 1995). Accordingly, it was GSWR that entered into the interim trail use/rail banking agreement with RTC. South Georgia Rails to Trails, Inc. (SGRT) was subsequently substituted as trail sponsor.

Subsequently, SCCR acquired all of GSWR's rail lines and leased those rail lines back to GSWR. See Ga. Sw. R.R.—Sale & Lease Exemption Within a Corporate Family Transaction—S.C. Cent. R.R., FD 34144 (STB served Jan. 18, 2002). According to GSWR, to ensure that it

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<sup>1</sup> The historic preservation condition and three environmental conditions, requiring that GGS (1) consult with the U.S. soil conservation service prior to engaging in any salvage activities, (2) protect endangered species during salvage activities, and (3) avoid adverse impacts to waterways and wetlands, remain in effect.

held the right to reactivate rail service on this line, it acquired from SCCR any and all rights SCCR might have had in this line at that time.

In a decision served on May 16, 2003, the Board granted GSWR's petition to vacate the NITU. Ga. Great S. Div, S.C. Cent. R.R.–Aban. & Discontinuance Exemption–Between Albany & Dawson, in Terrell, Lee & Dougherty Cntys., Ga., AB 389 (Sub-No. 1X) (served May 16, 2003) (May 16 decision). By decision served on February 2, 2004, the Board denied RTC/SGRT's joint petition for partial reconsideration of the May 16 decision.

On May 24, 2006, SGRT filed a new request for the issuance of a NITU to negotiate with GSWR for a 8.7-mile portion of the 13.62-mile line between milepost 77.8 and milepost 86.5 for use as a trail under the Trails Act and 49 C.F.R. § 1152.29. In a NITU served on July 24, 2006, the proceeding was reopened and a 180-day period was authorized for SGRT to negotiate with GSWR for interim trail use/rail banking for that 8.7-mile portion of the line between milepost 77.8 and milepost 86.5. In a letter filed on September 21, 2007, GSWR notified the Board that an interim trail use agreement between the parties had been reached.

On October 9, 2014, SGRT filed a request for the issuance of a NITU to negotiate with GSWR for acquisition of that portion of the line between milepost 72.88 near Sasser, Terrell County, Ga., and milepost 77.80, Lee County, Ga., for use as a trail under the Trails Act and 49 C.F.R. § 1152.29. SGRT submitted a statement of 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. In a response filed on October 10, 2014, GSWR has indicated its willingness to negotiate with SGRT for interim trail use.

GSWR states that it has not consummated the abandonment of the line. Because the petition for exemption in this proceeding was filed in 1994, the notice of consummation requirement at 49 C.F.R. § 1152.29(e)(2) does not apply.<sup>2</sup>

Because the abandonment has not been consummated, SGRT's request complies with the requirements of 49 C.F.R. § 1152.29, and GSWR 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

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<sup>2</sup> See Aban. & Discontinuance of Rail Lines & Transp. Under 49 U.S.C. § 10903, 2 S.T.B. 311, 317 (1997), in which the Board clarified that the notice of consummation requirement applies only to abandonment proceedings filed after January 23, 1997, the effective date of the abandonment regulations the Board adopted after the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

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, GSWR may fully abandon the line, provided the conditions imposed in the August 1996 decision are met. 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.

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. Upon reconsideration, the decision and notice served August 16, 1996, 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 SGRT to negotiate with GSWR for trail use for the portion of the line between milepost 72.88 near Sasser, Terrell County, Ga., and milepost 77.80 in Lee County, Ga., for a period of 180 days from the service date of this decision and notice, until July 20, 2015.
3. 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.
4. 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 3 above.
5. 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).
6. 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.
7. If an agreement for interim trail use/rail banking is reached by July 20, 2015, interim trail use may be implemented. If no agreement is reached by that time, GSWR may fully

abandon the line, subject to the conditions imposed in the August 1996 decision. 49 C.F.R. § 1152.29(d)(1).

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

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