

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-1004X¹

SHANNON TRANSPORT, INC.—ABANDONMENT EXEMPTION—
IN CLARION COUNTY, PA

Decided: July 26, 2007

Shannon Transport, Inc. (STI), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 12.5 miles of rail line, extending between milepost 6.0 and milepost 4.0 in or near Lawsonham, and the connecting line between milepost 0.0 near Lawsonham and milepost 10.5 near Sligo, in Clarion County, PA. On June 11, 2007, Allegheny Valley Land Trust (Allegheny Valley) filed a request for the issuance of a notice of interim trail use (NITU) and a public use condition. On June 28, 2007, notice of the exemption was served and published in the Federal Register (72 FR 35546-47). The exemption is scheduled to become effective on July 28, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 3, 2007. In the EA, SEA recommends two conditions. First, SEA notes that the Pennsylvania Fish and Boat Commission, Division of Environmental Services (FBC), has advised it that the removal and salvage of the rail lines should be done in such a manner as to avoid run-off, soil erosion, and sedimentation, and should be done in conformance with an approved Erosion and Sedimentation Control Plan. Therefore, SEA recommends that STI be required to consult with FBC prior to commencement of any salvage activities to avoid and minimize impacts to FBC's Summerville property.

Second, SEA states that the National Geodetic Survey (NGS) has advised it that a number of geodetic station markers have been identified that may be affected by the proposed abandonment.² Therefore, SEA recommends a condition requiring that STI contact NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of geodetic station markers.

¹ The notice served and published on June 28, 2007, embraced STB Docket No. AB-369 (Sub-No. 6X), Buffalo & Pittsburgh Railroad, Inc.—Discontinuance Exemption—in Clarion and Jefferson Counties, PA.

² NGS advised SEA that there were approximately a combined 51 geodetic station markers on the lines here and the contiguous line at issue in STB Docket No. AB-976 (Sub-No. 2X), Pittsburg & Shawmut Railroad, LLC—Abandonment Exemption—in Clarion and Jefferson Counties, PA et al.

Comments to the EA were due by July 18, 2007. On that date, a comment was received from STI, addressing the two conditions set forth in the EA. STI indicates that FBC's Summerville property is not adjacent to the lines owned by STI. Accordingly, SEA no longer recommends that STI be required to consult with FBC concerning this property. Further, STI states that it has confirmed through discussions with NGS that it is unlikely that any geodetic station markers will be disturbed by STI's salvage activities because of where NGS places them. STI states that it has confirmed with NGS that it can proceed with its salvage project so long as STI does not disturb any geodetic station markers. Accordingly, SEA recommends that STI be required to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

In the EA, SEA indicates that the right-of-way may be suitable for other public use following abandonment and salvage of the rail line. As stated, Allegheny Valley filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and for the issuance of a 180-day public use condition, pursuant to 49 U.S.C. 10905. Allegheny Valley requests that STI be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that STI be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. Allegheny Valley states that the time is needed to review title information and commence negotiations with STI.

Allegheny Valley has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In its comments filed on July 18, 2007, STI indicates its willingness to negotiate with Allegheny Valley for interim trail use, provided it is permitted to salvage the tracks, ties, signals, and other track materials.

Because Allegheny Valley's request complies with the requirements of 49 CFR 1152.29 and STI is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, STI may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 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. See 49 CFR 1152.28(a)(2). Because Allegheny Valley has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the July 28, 2007 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. If a trail use agreement is reached on a portion of the right-of-way, STI must keep the remaining portion intact for the remainder of the 180-day 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 an 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, STI is not required to deal exclusively with Allegheny Valley, but may engage in negotiation with other interested persons.

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. Upon reconsideration, the notice served on and published in the Federal Register on June 28, 2007, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to permit public use negotiations as set forth below, for a period of 180 days commencing from the July 28, 2007 effective date of the exemption (until January 24, 2008); and (2) to implement interim trail use/rail banking as set forth below to permit Allegheny Valley to negotiate with STI for trail use of the subject line, for a period of 180 days (until January 24, 2008). It also is subject to the condition that STI shall consult with NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, STI may discontinue service and salvage track and related materials. STI shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before January 24, 2008, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. 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.

5. 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.

6. 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 specified date.

7. If an agreement for interim trail use/rail banking is reached by January 24, 2008, interim trail use may be implemented. If no agreement is reached by that time, STI may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary