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SERVICE DATE – JANUARY 5, 2016

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB 1004X

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

Decided: January 4, 2016

Shannon Transport, Inc. (STI), filed a notice of exemption under 49 C.F.R. § 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. (the Line). Notice of the exemption was served and published in the Federal Register on June 28, 2007 (72 Fed. Reg. 35,546).

By decision and notice of interim trail use or abandonment (NITU) served on July 27, 2007, the proceeding was reopened and a 180-day period was authorized for Allegheny Valley Land Trust (Allegheny Valley) to negotiate an interim trail use/rail banking agreement with STI for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d). The negotiating period under the NITU was extended by several decisions, most recently by decision served on January 29, 2010, which extended the NITU negotiating period until July 12, 2010.

By letter filed on July 8, 2010, before the last NITU extension expired, Allegheny Valley informed the Board that an agreement was reached with STI for interim trail use/rail banking, and that the interim trail use/rail banking acquisition was completed on June 25, 2010. Allegheny Valley's description of the relevant right-of-way that was acquired did not include the portion of the Line between milepost 9.0 and 10.5 (the Remainder Segment).<sup>1</sup>

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<sup>1</sup> In 2012, the Board added 49 C.F.R. § 1152.29(h) to its Trails Act regulations, stating that when a trail use agreement provides for interim trail use over less of the right-of-way than is covered by the NITU, the parties must jointly notify the Board and request that the Board vacate the NITU and issue a replacement NITU for only the portion of the right-of-way covered by the interim trail use agreement. This regulation, however, was not in effect when Allegheny Valley and STI reached their interim trail use agreement. See Nat'l Trails System Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012) (issuing final rules and establishing 49 C.F.R. § 1152.29(h)).

Recently, STI<sup>2</sup> realized that abandonment of the Remainder Segment had never been consummated, clouding title to the property. On October 13, 2015, STI filed a Request to Reopen to Permit Consummation of Abandonment. Specifically, STI requests that the Board vacate the NITU, issue a replacement NITU for the portion of the Line that was acquired by Allegheny Valley for interim trail use/rail banking, and permit immediate consummation of the abandonment of the Remainder Segment. STI confirms that Allegheny Valley did not acquire the Remainder Segment for interim trail use in 2010 and indicates that the entire Line has been salvaged and that Allegheny Valley is developing a trail over the portion of the Line that it purchased. (STI Request to Reopen to Permit Consummation of Abandonment 3.) STI states that it believed there was a legal impediment to its consummation of the abandonment of the Remainder Segment because the Board never issued an order removing the Remainder Segment from the NITU. *Id.* at 5. STI further states that no parties will be affected by extending the time for consummation because there are no tracks on the right-of-way and no customers on the Remainder Segment.

STI wrongly suggests that there was a legal impediment to its consummating abandonment of the Remainder Segment in 2010; under the Board's rules, it should have filed for consummation of abandonment of the Remainder Segment within 60 days after the expiration of the NITU (or extension). *See* 49 C.F.R. § 1152.29(e)(2) (2010). However, in 2012, the Board promulgated 49 C.F.R. § 1152.29(h) to provide clarity in situations, like the one here, where an interim trail use/railbanking agreement covers only a portion of the right-of-way that was authorized to be abandoned. *See supra* note 1. STI's mistaken belief is understandable given the lack of a regulation specifically addressing those circumstances at the time, and it appears that no party will be prejudiced by allowing STI to now consummate abandonment of the Remainder Segment. Accordingly, pursuant to § 1152.29(h), the Board will vacate the 2007 NITU, thus permitting abandonment of the Remainder Segment to be consummated, and issue a replacement NITU that covers only the portion of the right-of-way subject to the interim trail use agreement.<sup>3</sup>

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<sup>2</sup> STI was succeeded by C&K Coal Company, but they will be referred to collectively as STI in this decision.

<sup>3</sup> Under 49 C.F.R. § 1152.29(e)(2), STI has 60 days from the date the 2007 NITU is vacated to consummate the abandonment of the Remainder Segment.

It is ordered:

1. This proceeding is reopened.
2. The NITU served in this proceeding on July 27, 2007, is vacated.
3. A replacement NITU applicable to Allegheny Valley for the portion of the Line between milepost 6.0 and milepost 4.0 in or near Lawsonham, and the connecting line between milepost 0.0 near Lawsonham and milepost 9.0 near Sligo, in Clarion County, Pa., is issued.
4. STI may fully abandon the portion of the Line between milepost 9.0 and milepost 10.5.
5. This decision is effective on its service date.

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