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SERVICE DATE - JANUARY 24, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-167 (Sub-No. 1168X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--
IN BROOKS AND HANCOCK COUNTIES, WV

Decided: January 22, 1997

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a portion of its line of railroad known as the Weirton Secondary Track between milepost 35.70 and milepost 39.70 in Brooke and Hancock Counties, WV. Notice of the exemption was served and published in the Federal Register on December 27, 1996 (61 FR 68334-35). The exemption is scheduled to become effective on January 26, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA), in this proceeding, served January 6, 1997. In the EA, SEA indicates that the National Resources Conservation Service (NRCS) advised SEA that there are prime farmland soils, identified as Chavies fine sandy loam, Chagrin fine sandy loam, Lindsides silt loams, and Huntington silt loam, in much of the area of the existing tracks. However, NRCS does not expect detrimental effects from salvage of the line unless previously undisturbed prime farmland is disturbed. Therefore, SEA recommends that Conrail confine its salvage activities to the existing right-of-way and not disturb any previously undisturbed prime farmland.

By petition filed January 8, 1997, West Virginia Rail Authority, City of Weirton and Harmon Creek Trail Association (collectively commenters) late-filed a request for a notice of interim trail use (NITU) for the entire line under 16 U.S.C. 1247(d) and a public use condition, so that it could negotiate with Conrail for use of the line as a trail.

Commenters request that Conrail be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, along the right-of-way, except for public use on reasonable terms, and that Conrail be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The commenters state that they need the full 180-day period allowed because the planning process which addressees this corridor has not been completed, and only brief negotiations have occurred with Conrail. They submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed on January 16, 1997, Conrail indicated its willingness to negotiate with commenters for interim trail use.

Late-filed trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way¹ and the carrier is willing to enter into negotiations. Accordingly, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within the 180 days, Conrail may fully abandon the line. 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 as trail under 49 U.S.C. 10905, Rail Abandonments - Use of Rights-of-Way as Trails (Trails), 2 I.C.C.2d 591 (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.

Commenters' submission meets the requirements for a public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying: (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. Accordingly, the requested 180-day public use condition will be imposed.

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 appropriate for public purposes.

When the need for interim trail use/rail banking and a public use condition is shown, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609.

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 of exemption served and published in the Federal Register on December 27, 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 and is subject to the conditions that Conrail shall: (a) keep intact all of the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days

¹ See Rail Abandonments--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).

(until July 25, 1997), to enable any State or local government agency, or other interested persons to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment; and (b) confine its salvage activities to the existing right-of-way and not disturb any previously undisturbed prime farmland.

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 of 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 trail use/rail banking is reached by July 25, 1997, interim trail use may be implemented. If no agreement is reached by that time, Conrail may fully abandon the line.

7. The decision is effective on the service date.

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

Vernon A. Williams
Secretary