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SERVICE DATE – LATE RELEASE FEBRUARY 22, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 397 (Sub-No. 7X)

TULARE VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
TULARE COUNTY, CAL.

Decided: February 22, 2011

Tulare Valley Railroad Company (TVR) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 5.9-mile line of railroad between milepost 71+2969.2 at or near Ducor and milepost 66.0 at or near Ultra, in Tulare County, Cal. Notice of the exemption was served and published in the Federal Register on July 21, 2009 (74 Fed. Reg. 35,904). The exemption became effective on August 20, 2009.

By decision served August 19, 2009, the Board imposed a condition on the abandonment under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, requiring TVR to retain its interest in and take no steps to alter historic properties on the line until the effect of the abandonment on those properties was considered.

By decision and notice of interim trail use or abandonment (NITU) served on May 11, 2010, the proceeding was reopened and a 180-day period was authorized for American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement with TVR for the right-of-way pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). TVR and ATA subsequently reached a trail use/rail banking agreement.

On February 2, 2011, ATA and K&M Properties One, LLC (K&M) (collectively, petitioners), filed a joint statement, pursuant to 49 C.F.R. § 1152.29(f), requesting the Board to reopen the proceeding, to vacate the existing NITU, and to issue a replacement NITU substituting K&M as the new interim trail user. By letter filed on February 14, 2011, TVR indicated it concurs with the substitution.

Petitioners have submitted a copy of the extant NITU and a statement by K&M of its willingness to assume financial responsibility for interim trail use and rail banking pursuant to the Trails Act and 49 C.F.R. § 1152.29. Petitioners have also indicated the date of transfer of responsibility for the right-of-way as February 23, 2011.

Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29. Accordingly, petitioners' request will be granted and a replacement NITU will be issued.

This action 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. The NITU served on May 11, 2010, is vacated.
3. A replacement NITU applicable to K&M as interim trail user is issued, effective on the service date of this decision and notice, for a period of 180 days from the service date, until August 21, 2011.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
5. If the trail 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.
6. This decision and notice is effective on its service date.

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