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SERVICE DATE - JULY 17, 1998

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1165X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN ST. JOSEPH COUNTY, IN

Decided: July 14, 1998

On October 17, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the City of South Bend, IN (City), to negotiate an interim trail use/rail banking agreement with Consolidated Rail Corporation (Conrail) for a 2.0+-mile portion of its line of railroad known as the Plymouth Industrial Track between milepost 179.00+ and railroad milepost 181.00+, in St. Joseph, IN.¹ At the request of the City, the negotiation period under the NITU was extended by decisions served April 25, 1997, February 19, 1998 and May 7, 1998. The latest extension expired on June 30, 1998.

On July 1, 1998, the City filed a request for an extension of the negotiation period and the public use condition until September 30, 1998. The City states that the property appraisal of the right-of-way has been completed. The City also states that an offer has been made, but that they were unable to reach an agreement during the previously granted negotiation period. By letter dated July 14, 1998, Conrail advised the Board that it supports an extension of the trail use negotiation period until September 30, 1998.

Under section 10906, the Board's public use jurisdiction expires 180 days from the effective date of the decision approving the abandonment. The public use condition imposed here was for the maximum 180-day period. It expired on April 15, 1997, and may not be renewed. Therefore, the requested extension of the public use condition must be denied.²

¹ Notice of the exemption was served and published in the Federal Register on September 17, 1996 (61 FR 49006).

² See 49 CFR 1152.28(b); and Rail Abandonments--Public Use Conditions--Revision, 8 I.C.C.2d 392, 395-398 (1992).

The negotiation period under the NITU will be extended to September 30, 1998.³ It will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the public use condition is denied.
2. The negotiating period under the NITU is extended to September 30, 1998.
3. This decision is effective on the service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction to extend the NITU negotiation period. See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).