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SERVICE DATE - FEBRUARY 27, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-603 (Sub-No. 1X)

V AND S RAILWAY, INC.–ABANDONMENT EXEMPTION–IN BARBER COUNTY, KS

Decided: February 24, 2004

By decision served on August 13, 2003 (August 13 decision), the Board granted V and S Railway, Inc. (VSR), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 20-mile line of railroad extending from milepost 21, at Medicine Lodge, to the end of the line at milepost 41, at Sun City, in Barber County, KS, subject to standard employee protective conditions. The exemption became effective on September 12, 2003.

On January 26, 2004, American Trails Association, Inc. (ATA), late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with VSR for acquisition of the right-of-way for use as a trail.<sup>1</sup> ATA submitted a statement of its willingness to assume financial responsibility for the 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 payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on February 19, 2004, VSR indicated that it has not consummated the abandonment of the line and that it is willing to negotiate with ATA for interim trail use.

Because ATA's request complies with the requirements of 49 CFR 1152.29 and VSR 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

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<sup>1</sup> Requests for trail use/rail banking under 49 CFR 1152.29 were due no later than June 11, 2003. The Board's policy is to accept filings after the due date when good cause is shown. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997). Because there is no indication that ATA's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

agreement, no further Board action is necessary. If no agreement is reached within 180 days, VSR may fully abandon the line, provided the previously imposed labor protective conditions are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision and notice 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. ATA's late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the decision served on August 13, 2003, 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 for a period of 180 days from the service date of this decision and notice (until August 25, 2004).
  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 August 25, 2004, interim trail use may be implemented. If no agreement is reached by that time, VSR may fully abandon the line, provided the previously imposed labor protective conditions are met.

8. This decision and notice is effective on its date of service.

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

Vernon A. Williams  
Secretary