

SERVICE DATE - JUNE 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-325 (Sub-No. 2X)

FLORIDA MIDLAND RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN SUMTER AND LAKE COUNTIES, FL

Decided: June 13, 2002

By decision served on February 23, 2001 (February 23 decision), the Board granted Florida Midland Railroad Company (FMID) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 13.23-mile line of railroad known as the Leesburg Branch, extending from milepost ST-762.10 in Wildwood to milepost ST-773.71 in Leesburg and from milepost AS-800.76 to milepost AS-802.38 at Leesburg, in Sumter and Lake Counties, FL, subject to environmental and standard employee protective conditions.¹ The exemption was scheduled to become effective on March 25, 2001.

On April 11, 2002, the City of Leesburg, FL (the City), filed a request for a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29, and for a 180-day public use condition for the right-of-way extending from milepost ST-769.43 to milepost ST-773.7, and from milepost AS-800.8 to milepost AS-802.38.² The City submitted a statement indicating its willingness to assume 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 FMID against any potential liability), and for the payment of taxes for, 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 reactivation for rail service. By letter filed on May 28, 2002, FMID states that it has not consummated the abandonment of the line and that it is willing to negotiate with the City.

The November 24 Notice provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 14, 2000. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49

¹ Notice of the filing was served and published in the Federal Register on November 24, 2000 (65 FR 70631) (November 24 Notice).

² By facsimile filed on May 22, 2002, the City corrected the milepost designation from AS-803.7 to AS-802.38.

U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed trail use 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). Inasmuch as FMID has not consummated the abandonment and is willing to negotiate with the City for trail use, a NITU will be issued under 49 CFR 1152.29 covering the above-described portions of the right-of-way.

The City's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond a 180-day period after the effective date of the decision (here March 25, 2001). This period ended on September 21, 2001. Moreover, as stated in the February 23 decision, FMID apparently owns the track structure and related materials on the line, but does not own the underlying real estate comprising the right-of-way. Therefore, public use requests are not appropriate because, after abandonment, FMID will not retain a transferable interest to which a public use condition under 49 U.S.C. 10905 could attach. See Florida Midland Railroad Company, Inc.—Abandonment Exemption—In Lake County, FL, Docket No. AB-325X (ICC served Feb. 2, 1990). Accordingly, the request cannot be entertained.

It is ordered:

1. This proceeding is reopened.
2. The request for a public use condition is denied.
3. Upon reconsideration, the decision served on February 23, 2001, exempting the abandonment by FMID of the line described above, is modified to the extent necessary to implement interim trail use/rail banking for the portions of the line described above for a period of 180 days from the date of service of this decision.
4. If an interim trail use/rail banking agreement is reached as to the portions of the right-of-way described above it must require the trail user to assume, for the term of the agreement, full responsibility for management of, 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 the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, FMID may abandon that portion of the line, provided the conditions imposed in the February 23 decision 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