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SERVICE DATE - OCTOBER 7, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-550X

R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.--  
ABANDONMENT EXEMPTION--IN LEHIGH COUNTY, PA

Decided: October 5, 1998

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 1.945-mile line of railroad known as the Barber's Quarry Industrial Track between milepost 93.144 in the vicinity of Union and 3rd Streets in Allentown and milepost 95.089 in the vicinity of Lawrence Street and Lehigh Parkway in the township of Salisbury, Lehigh County, PA. Notice of the exemption was served and published in the Federal Register on September 8, 1998 (63 FR 47546-47). The exemption is scheduled to become effective on October 8, 1998.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA), served September 18, 1998. In the EA, SEA indicates that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. NGS states that it must be notified 90 days in advance of any activities that would disturb or destroy these markers. Therefore, SEA recommends that a condition be imposed requiring RJCN to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed September 14, 1998, the County of Lehigh, PA (County) filed a request for 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), and for a public use condition so that it could negotiate with RJCN for acquisition of the right-of-way for use as a recreational trail. The County requests that RJCN be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that RJCN 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 County states that it needs the full 180-day period to review title information, complete a trail plan, and commence negotiations with RJCN. The County submitted a statement indicating 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 taxes for, the right-of-way, as required at 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.<sup>1</sup> By letter filed September 24, 1998, RJCN indicated its willingness to negotiate with the County for interim trail use and public use for a period of 90 days.

The County's request complies with the requirements of 49 CFR 1152.29 and RJCN is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 90-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 90 days, RJCN 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 a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). To justify a public use condition, a party must set forth: (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. See 49 CFR 1152.28(a)(2). The County has satisfied these requirements and, therefore, a 90-day public use condition will be imposed commencing with the effective date of the exemption.<sup>2</sup>

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, RJCN must keep the remaining right-of-way intact for the remainder of the 90-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RJCN is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

As conditioned, 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.

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<sup>1</sup> By letter filed September 23, 1998, the County requests that the time period sought for the public use condition be reduced to 90 days instead of 180 days as originally requested.

<sup>2</sup> Because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, should a resolution not be reached through negotiations within the 90-day period, the County may request an extension of up to 90 additional days for the public use condition.

2. Upon reconsideration, the notice of exemption served and published in the Federal Register on September 8, 1998, 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, subject to the conditions that RJCN shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (b) keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 90 days from the October 8, 1998 effective date (until January 6, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the 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.

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 obligation for 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 specified date.

6. If any agreement for interim trail use/rail banking is reached by January 6, 1999, interim trail use may implemented. If no agreement is reached by that time, RJCN may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary