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SERVICE DATE - SEPTEMBER 23, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.—ABANDONMENT EXEMPTION—
IN LAS ANIMAS COUNTY, CO

Decided: September 22, 2003

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures for out-of-service rail lines at 49 CFR 1152.50 to abandon a 28-mile segment of rail line in Las Animas County, CO, between milepost 2.0 at Jensen and the end of the Trinidad line at milepost 30.0. Notice of the exemption was served and published in the Federal Register on September 21, 2000 (65 FR 57239-40).

By decision served on October 20, 2000, the proceeding was reopened and the exemption was made subject to the following environmental conditions requiring Trinidad to: (a) consult with the U.S. Army Corps of Engineers prior to salvage of the right-of-way to determine if the proposed abandonment is consistent with applicable Federal, state, and local water quality standards, and to determine if permits are required under section 404 of the Clean Water Act; (b) consult with the U.S. Environmental Protection Agency (EPA) regarding the discharge of stormwater resulting from the disturbance of more than 5 acres, and consult with EPA and secure all necessary permits prior to initiation of salvage or disposal activities; (c) consult with the U.S. Fish and Wildlife Service prior to initiation of salvage or disposal activities; (d) consult with the Colorado Department of Archaeology and Preservation prior to salvage of the rail line to determine if the proposed abandonment is consistent with the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (e) consult with the Colorado Department of Transportation prior to abandonment to determine the impact of salvage activities on existing highway/rail at-grade crossings; (f) consult with the Colorado Department of Environmental Quality prior to abandonment to secure all necessary permits prior to initiation of salvage or disposal activities; (g) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (h) file all right-of-way and tract maps, land schedules, and related railroad cadastral records with the Las Animas County Surveyor and/or Clerk and Recorder, and file all records regarding structures, drainage, underground utility records, contracts, etc., with the Las Animas County Engineer or other similar repository for preservation of historical engineering data.

The Board's Section of Environmental Analysis (SEA) indicates that it has now received a letter from Trinidad's successor, Kern Valley Railroad Company (Kern Valley), containing documentation of consultations with relevant agencies. Consequently, SEA states that it believes Trinidad has complied with the environmental conditions imposed in the October 20, 2000

decision. Therefore, SEA recommends that the conditions be removed. Accordingly, the proceeding will be reopened and the previously imposed conditions will be removed.

On September 12, 2003, Kern Valley filed a request to extend until January 1, 2004, the time to consummate the abandonment and to file its notice of consummation. The basis for the request is Kern Valley's concern that its abandonment authority will lapse on October 2, 2003, without the extension.¹ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause, request an extension of time to file a notice of consummation in abandonment proceedings. Good cause has been demonstrated here and, accordingly, the request to extend the time to consummate the abandonment and for filing a notice of consummation will be granted.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the environmental conditions imposed in the October 20, 2000 decision are removed.
3. Kern Valley's request for an extension of time to exercise the abandonment authority is granted.
4. The authority to abandon must be exercised on or before January 1, 2004.

¹ Kern Valley also expressed concern that the Board might also lose jurisdiction to issue a decision permitting trail use negotiations between it and American Trails Association, Inc. (ATA), but by decision and notice of interim trail use served on September 15, 2003, the Board authorized ATA to negotiate an interim trail use/rail banking agreement with Kern Valley for that portion of the line between mileposts 2.0 and 15.11 for a period of 180 days, until March 13, 2004.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary