

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-857X

GREAT WESTERN RAILWAY OF COLORADO, LLC.—ABANDONMENT
EXEMPTION—IN WELD COUNTY, CO

Decided: October 23, 2006

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, a distance of approximately 11.7 miles, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on November 10, 2003 (68 FR 63846-47).¹ The exemption was scheduled to become effective on December 10, 2003. On November 14, 2003, however, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Windsor, Severance & Eaton Railroad, LLC (WS&E) to purchase all or a portion of the Eaton Subdivision. The filing of that notice of intent had the effect of automatically staying the effective date of the exemption for 10 days, until December 20, 2003.

On March 24, 2004, WS&E filed a request for permission to withdraw its notice of intent to file an OFA. By a decision and notice of interim trail use or abandonment (NITU) served on April 7, 2004: (1) the proceeding was reopened; (2) WS&E's withdrawal request was granted and the OFA process was terminated; (3) the exemption became effective on the decision's service date, subject to conditions; and (4) a 180-day period was authorized for the Municipalities of Eaton, Severance, and Windsor, CO (Municipalities), to negotiate an interim trail use/rail banking agreement with GWRC for the right-of-way. The negotiating period under the NITU was extended by decisions served on October 27, 2004, April 14, 2005, September 22, 2005, and March 28, 2006, with the latest extension scheduled to expire on September 24, 2006.

By letter filed on September 22, 2006, the Municipalities state that, in order to properly govern the use of any trail that is transferred, in August 2006, by Intergovernmental Agreement, they formed a separate governmental entity known as the Great Western Trail Authority (Trail Authority). The Municipalities add that, although they control the Trail Authority, the latter is a new entity and, accordingly, they would like a new NITU issued in its name. The Municipalities also included a statement of willingness to assume responsibility by the Trail Authority pursuant

¹ By decision served November 24, 2003, the proceeding was reopened and the exemption was made subject to two environmental conditions – a historic preservation condition and a National Geodetic Survey (NGS) notification condition. By decision served May 26, 2004, the historic preservation condition was removed. The NGS condition remains in effect.

to the requirements of 49 CFR 1152.25(a)(2). Moreover, on September 22, 2006, GWRC filed a letter stating that it has not consummated the abandonment of the line and is willing to negotiate for trail use with the Trail Authority.

The Municipalities' submission is in compliance with the substitution requirements of 49 CFR 1152.29(f). Also, where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period (here in the form of a new period) is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996).

Accordingly, the Trail Authority will be substituted for the Municipalities as the trail proponent in this matter, and the Trail Authority and GWRC will have 180 days from the service date of this decision to negotiate under the new NITU.

This action 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. The NITU served on April 7, 2004, is vacated.
3. A replacement NITU designating the Trail Authority as the new trail proponent is issued, effective on the service date of this decision.
4. The negotiating period under the NITU will run for a period of 180 days commencing from the service date of this decision (until April 22, 2007).
5. 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 payment of any and all taxes that may be levied or assessed against, the right-of-way.
6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.
7. If the trail user intends to terminate trail use, it must send the Board a copy of this NITU and request that trail use be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by April 22, 2007, interim trail use may be implemented. If no agreement is reached by that date, GWRC may fully abandon the line.

9. This decision is effective on its service date.

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

Vernon A. Williams
Secretary