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SERVICE DATE – FEBRUARY 14, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1081X

SAN PEDRO RAILROAD OPERATING COMPANY, LLC—ABANDONMENT
EXEMPTION—IN COCHISE COUNTY, AZ

Decided: February 12, 2007

By decision served February 3, 2006, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by San Pedro Railroad Operating Company, LLC (SPROC) of approximately 76.2 miles of railroad line in Cochise County, AZ, as follows: (1) the Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) the Douglas Branch (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, a distance of 19.9 miles. The exemption was scheduled to become effective on March 5, 2006, unless an offer of financial assistance (OFA) was filed on or before February 13, 2006.

On February 13, 2006, Sonora-Arizona International LLC (Sonora) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the line. By decision served on February 17, 2006, the Board, by the Director of the Office of Proceedings, found Sonora to be financially responsible and postponed the effective date of the exemption to permit the OFA process to proceed. Subsequently, on March 17, 2006, Sonora filed a request that the Board set the terms and conditions for the sale of this line. The Board did so in a decision served on April 13, 2006. On April 24, 2006, Sonora filed notice that it accepted the Board's terms and conditions. The Board approved the sale and dismissed the petition for exemption, effective on the date the sale was consummated, in a decision served on May 3, 2006.

On July 12, 2006, Sonora filed a notice indicating its withdrawal of its OFA in this proceeding. On July 13, 2006, SPROC filed a letter requesting that the Board vacate the May 3 decision authorizing the sale and authorize SPROC to abandon this line. On July 20, 2006, SPROC filed a letter indicating its willingness to enter into trail use negotiations previously requested by the Trust for Public Land (the Trust) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By a decision served on July 26, 2006, the Board reopened the proceeding, granted Sonora permission to withdraw its OFA, terminated the financial assistance process, and vacated the February 17, 2006 decision to the extent it postponed the effective date of the

abandonment exemption. In the same decision, the Board also imposed a public use condition and issued a notice of interim trail use (NITU) for the subject line under the Trails Act, authorizing the Trust to negotiate an interim trail use/rail banking agreement with SPROC until January 22, 2007.

On January 22, 2007, the Trust filed a request for a 30-day extension of the NITU negotiating period. The Trust states that it and SPROC are in the process of completing negotiations on an option for the Trust's purchase of the portions of the subject right-of-way owned by SPROC in the Douglas Branch as follows: (a) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, and (b) between milepost 1055.8 near Charleston and approximately milepost 1074.3 at the intersection of the rail line with State Highway 92 (subject right-of-way). The Trust states that additional time is needed for the parties to negotiate an option agreement for the property in the subject right-of-way.

According to the Trust, the subject right-of-way will not include portions of the railroad line designated under the original abandonment and NITU filing described as: (1) the Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, and (2) portions of the Douglas Branch, specifically (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, and (b) between approximately milepost 1074.3 at the intersection with State Highway 92 and milepost 1097.3 near Paul Spur. According to the Trust, SPROC has indicated that it desires to remove these portions of the right-of-way from continued trail use negotiations.

In a letter filed January 25, 2007, SPROC acknowledged receipt of the Trust's extension request and consented to the extension for those portions of the property in the subject right-of-way identified by the Trust.

On January 29, 2007, SPROC filed a letter stating that it had consummated the abandonment of the line between: (1) milepost 1084.0 and milepost 1097.3 at Paul Spur, (2) milepost 1097.3 at Paul Spur and milepost 1106.5 near Douglas, and (3) milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee.¹

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating 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 NITU negotiating period will be extended to February 21, 2007.

¹ The status of the segment of the right-of-way between milepost 1074.3 at the intersection of the rail line with State Highway 92 and milepost 1084.0 was not mentioned by SPROC in its January 29 letter.

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

It is ordered:

1. Petitioner's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until February 21, 2007, for the portion of the line: (a) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, and (b) between milepost 1055.8 near Charleston and approximately milepost 1074.3 at the intersection of the rail line with State Highway 92.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary