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SERVICE DATE - SEPTEMBER 24, 1998

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-397 (Sub-No. 3X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE
EXEMPTION--IN TULARE AND FRESNO COUNTIES, CA

Decided: September 22, 1998

BACKGROUND

By decision served and notice published in the Federal Register on February 9, 1995 (60 FR 7792), the Tulare Valley Railroad Company (TVR) was granted an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon 55.7 miles of rail line between: (1) milepost 51.0 near Lac Jac and milepost 67.0 near Calwa, in Fresno County, CA, a distance of 16 miles (Calwa Line); (2) milepost 49.8 near Reedley and milepost 38.5 near Cutler, in Tulare County, CA, a distance of 11.3 miles (Cutler Line); (3) milepost 19.0 near Cutler and milepost 38.0 near Exeter, in Tulare County, a distance of 19.0 miles (Exeter Line); and (4) milepost 20.6 near Wyeth and milepost 11.2 near Orange Cove, in Tulare County, a distance of 9.4 miles (Orange Cove Spur). In addition, TVR was granted exemption authority to discontinue service over 1.2 miles of line between milepost 51.0 near Lac Jac and milepost 49.8 at Manning Avenue in Reedley.

Subsequently, on April 24, 1995, the Board served a decision and notice of interim trail use or abandonment (NITU) authorizing American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), with TVR for the above-described 55.7-mile right-of-way.

Thereafter, on August 13, 1996, a second NITU was served, authorizing ATA to negotiate with TVR for approximately 25 miles of rights-of-way: (1) between milepost 38.5 at or near Cutler

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute and regulations, unless otherwise indicated.

and milepost 48+1888 at or near Dinuba Avenue in Reedley; (2) between milepost 50+3780 at or near Lac Jac and milepost 58+2025 at or near Del Rey; and (3) between milepost 58+4500 at or near American Avenue near Del Rey and milepost 67.0 at or near Calwa, in Tulare and Fresno Counties, CA. ATA subsequently notified the Board that it had acquired these segments for trail purposes.²

On February 13, 1998, pursuant to the provisions of 49 CFR 1152.29(d)(2),³ ATA filed a notice of intent to terminate trail use with respect to the line segment between milepost 58+4500 at or near American Avenue near Del Rey and milepost 67.0 at or near Calwa, a distance of approximately 8.5 miles in Fresno County. Shortly thereafter, on February 17, 1998, ATA filed a notice of intent to terminate trail use with respect to the line segment between milepost 58+2025 near Del Rey and milepost 58+3100 near Parlier, a distance of approximately 5 miles in Fresno County.

On March 3, 1998, the Rails to Trails Conservancy (RTC) filed a statement opposing ATA's requests to terminate trail use with respect to the above-described segments. On March 23, 1998, ATA filed a reply. The Tulare County Farm Bureau and the Fresno County Farm Bureau (the Farm Bureaus), on April 20 and 21, 1998, respectively, also filed replies supporting the termination of trail use.

On April 27, 1998, ATA filed a third notice of intent to terminate trail use, relating to the following segments: (1) between milepost 51+0300 at or near Lac Jac and milepost 53+3100 at or near Parlier, a distance of approximately 2 miles, in Fresno County; (2) between milepost 58+2025 and milepost 58+4500 in Del Rey, a distance of 2,475 feet, in Fresno County;⁴ and (3) between milepost 38.5 at or near Cutler and milepost 47+0650 near Reedley, a distance of approximately 8.5 miles, in Tulare County.

² When it notified the Board of the acquisition on February 10, 1997, ATA also requested issuance of a NITU to negotiate with TVR for acquisition of an additional segment of right-of-way in Reedley, between milepost 48+1888 at or near Dinuba Avenue and milepost 49+3125 at or near Manning Avenue, a distance of approximately 1 mile in Fresno County. A NITU covering this segment was served on April 17, 1997. The segment is not a subject of the pleadings now before the Board.

³ Current section 1152.29(d)(2) is essentially the same as the like-numbered pre-ICCTA section.

⁴ It appears that, as this segment was not specified in the NITU served August 13, 1996, an agreement covering it must have been reached pursuant to the NITU served April 24, 1995. The record does not clarify this point. Nevertheless, since ATA has requested termination of trail use as to this segment, and this decision authorizes TVR to discontinue interim trail use and abandon the segments for which the NITUs have been vacated, the issue is moot.

The two segments specified in ATA's February 13 and February 17 termination notices and the first two segments specified in the April 27 notice connect to form the entire 16-mile Calwa Line, except for the short end segment extending between milepost 51.0 and milepost 51+0300.⁵ The third segment specified in the April 27 notice constitutes all but approximately 2.8 miles at the end of the 11.3-mile Cutler Line.⁶

THE PARTIES' ALLEGATIONS

In its opposition, RTC contends that ATA is abusing the Trails Act and taking advantage of owners of property adjacent to railroad rights-of-way. RTC asserts that ATA is a for-profit organization that has never actually developed a trail on any property for which it has served as an interim trail manager.⁷ Nor did ATA transfer the segments at issue here to a new trail manager.⁸ According to RTC, ATA has engaged in a pattern of behavior demonstrating that its objective is to act as a land company that seeks to extort excessive prices from adjacent landowners for portions of right-of-way. In RTC's view, the only reason ATA seeks to terminate trail use here is to facilitate the sale of the rail banked corridor to adjacent landowners. It asks that this agency decline to facilitate and sanction ATA's assertedly illegal practices.

ATA replies that RTC misapprehends the statutory and regulatory schemes. ATA emphasizes that interim trail use is strictly voluntary, that the Board's role under the statute is ministerial, and that the Board's regulations essentially give a trail operator the unqualified right at any time to terminate trail use and ask that a trail condition be vacated.

In response to RTC's claim that ATA is abusing the Trails Act process, ATA replies that it was established to acquire rights-of-way of railroad lines authorized for abandonment and to hold them under the Trails Act with the intent of finding long-term trail operators who will develop the property for interim trail use under 16 U.S.C. 1247(d). ATA claims that it asks the Board to relieve it of its responsibilities as a trail manager only when it is unable to find a successor operator, as here. It then assertedly gives adjacent landowners the opportunity to acquire its interests in the land parcels for payment of what it describes as a modest administrative fee. ATA claims that neither the

⁵ The record does not reveal whether ATA ever negotiated a trail use agreement covering this short segment.

⁶ The record does not reveal whether ATA ever negotiated trail use agreements covering the segments of the Cutler Line between milepost 47+0650 and the end of the line.

⁷ Neither the Board nor its predecessor agency has required that a trail be developed for a particular kind of trail use within a particular time.

⁸ RTC recognizes, however, that ATA has transferred other segments to "bona fide trail managers." See Reply at 5 n.6, 6.

adjacent landowners nor the public are left in a worse position than they would have faced absent ATA's interim trail use.

The Farm Bureaus support ATA's requests that the NITUs be vacated because they oppose continued trail use, and they want TVR to be allowed to fully abandon the involved lines.

DISCUSSION

Under 49 CFR 1152.29(d)(2), whenever a trail manager intends to terminate trail use over a portion of a right-of-way and sends the Board a request that a NITU be vacated, the Board "will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way." Thus, as ATA states, the duration of interim trail use on a particular right-of-way is entirely voluntary and the Board's role is ministerial. RTC has raised troubling allegations in its opposition. But no landowners have come forward to support RTC's arguments that ATA is taking advantage of them. Indeed, the only local interests that have participated are the Farm Bureaus, which support ATA's requests. Further, no substitute trail user has come forward or been identified. Finally, ATA has complied with the requirements of section 1152.29(d)(2) regarding requests to vacate NITUs. In these circumstances, ATA's requests to vacate the NITUs will be granted with respect to the line segments identified above, and TVR will be permitted to fully abandon those line segments.

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.
2. The NITUs served in this proceeding are vacated with respect to the line segments: (1) between milepost 51+0300 at or near Lac Jac and milepost 67.0 at or near Calwa (Calwa Line), in Fresno County, CA,⁹ and (2) between milepost 38.5 at or near Cutler and milepost 47+0650 near Reedley, in Tulare County, CA. TVR may fully abandon the segments for which the NITUs have been vacated.

⁹ This is the equivalent description of the first four segments specified by ATA.

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3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary