

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-398 (Sub-No. 3X)

SAN JOAQUIN VALLEY RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN FRESNO COUNTY, CA

Decided: January 30, 1997

On October 23, 1995, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the city of Clovis, CA (Clovis), to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), with San Joaquin Valley Railroad Company (SJVR) for substantially the entire 4.5-mile line segment of the Clovis Branch between milepost 214.5 at Tarpey and milepost 219.0 at Glorietta Station, in Fresno County, CA.² The 180-day period expired on November 24, 1995, but was extended through November 19, 1996, by decisions served December 12, 1995, and June 7, 1996.

By letter filed November 19, 1996, Clovis seeks to extend the NITU negotiating period for an additional 180 days. Clovis states that it has agreed to expand the scope of the negotiations to include the acquisition of additional SP lines in the Fresno-Clovis Metropolitan Area.³ It asserts that funding sources have

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.

² Clovis' request covered the entire right-of-way, except the segment between Fifth Street, at or near milepost 217.3, and Third Street, at or near milepost 217.5. Then, in a letter dated May 28, 1996, Southern Pacific Transportation Company (SP), the owner of the right-of-way, expanded the excluded segment to encompass the mileage between milepost 217.2 and milepost 217.7.

³ Specifically, Clovis states that it has agreed to extend its trail use request to cover the entire corridor, in excess of 13 miles, within Clovis, the city of Fresno, and unincorporated area of Fresno County, from North Ingram Avenue (milepost 4.71) to Willow Avenue and adjacent to North Willow Avenue from East Copper Avenue (milepost 222.93) to approximately the East Dayton Alignment (milepost 214.50). The bulk of the additional segment was at issue in Southern Pacific Transportation Company

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been located and negotiations are proceeding. Because three separate jurisdictions are involved, it notes that negotiations are complex and additional time is needed to bring them to a successful conclusion. SJVR and SP consent to the extension request.

Where, as here, the carrier is willing to continue trail use negotiations, the Board's jurisdiction is not terminated and the negotiating period may be extended.⁴ Under the circumstances, a further extension of the NITU negotiation period is warranted and will promote the establishment of trails and rail banking consistent with the Trails Act.

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

It is ordered:

1. The NITU negotiating period is extended for 180 days to May 18, 1997.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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Abandonment Exemption in Fresno County, CA, Docket No. AB-12 (Sub-No. 149X), et al. (ICC served Jan. 11, 1994). There, SP was authorized to abandon, and SJVR was authorized to discontinue service over, a 4.15-mile segment of the Clovis Branch extending between milepost 219.00, at or near the Glorietta Station, and milepost 223.15, at or near the Cooper Avenue Station. The ICC disclaimed jurisdiction over SP's related action to abandon an exempt 4.71-mile spur track that connected to the Clovis Branch at milepost 220.9, at or near Pinedale Station.

The Board accepts late-filed trail use requests if it retains jurisdiction over the right-of-way. Rail Abandonments-- Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). If Clovis and SP believe that the Board has retained jurisdiction over the 4.15-mile segment that was at issue in Docket No. AB-12 (Sub-No. 149X), they may petition to have that proceeding reopened and a NITU issued.

⁴ See Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).