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SERVICE DATE - OCTOBER 2, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC.–LEASE AND OPERATION EXEMPTION–
KERN VALLEY RAILROAD COMPANY

Decided: October 1, 2002

The subject of this proceeding is a 28-mile line of railroad extending from milepost 2.0 at Jansen (west of Trinidad) to the end of the line at the former New Elk Mine at milepost 30.0 (east of Stonewall), in Las Animas County, CO. The line is also the subject of Trinidad Railway, Inc.–Abandonment Exemption–In Las Animas County, CO, STB Docket No. AB-573X (Abandonment Docket), and Kern Valley Railroad Company–Acquisition and Operation Exemption–Trinidad Railway, Inc., STB Finance Docket No. 33956 (Acquisition Docket).

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) – the proposed lessee here – invoked the class exemption procedures at 49 CFR 1152.50 for out-of-service rail lines to abandon the line. Before that notice went into effect, however, Rail Ventures, Inc. (Rail Ventures) timely filed a notice of intent to invoke the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 to acquire the line for continued rail service and subsequently filed an OFA.¹ During the pendency of the abandonment proceeding, Kern Valley Railroad Company (Kern Valley) – the proposed lessor here – acquired the line from Trinidad subject to the conditions placed on the abandonment exemption. When it purchased the line, Kern Valley stated that it did not acquire the line segment to provide rail service but rather to salvage the rail property once it was abandoned. At the time, Kern Valley also acknowledged that the line remained subject to the section 10904 process, a request for issuance of a NITU, and other conditions imposed on the notice of abandonment exemption.

In a decision served on August 13, 2001, in the Acquisition and Abandonment Dockets, the Board disposed of various challenges to the propriety of Kern Valley's acquisition and of Rail Ventures' OFA. It also set a date by which Kern Valley or Rail Ventures could request the agency to

¹ Also, the Rails to Trails Conservancy (RTC) requested issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d). However, because an OFA takes priority over a request for a NITU, the latter was held in abeyance pending the outcome of the OFA process.

establish the terms and conditions for purchase of the line if the two parties were unable to agree on a purchase price.

By a letter filed August 31, 2001, Kern Valley requested leave to withdraw the abandonment exemption request, which Rail Ventures opposed. On September 4, 2001, Trinidad filed a notice of exemption under 49 CFR 1150.31 to lease and operate the line pursuant to an agreement with Kern Valley. Before the notice became effective, Rail Ventures filed a petition to stay the exemption, to which Kern Valley replied in opposition.

In order to permit full consideration and proper resolution of the various issues raised in this and the related proceedings, the effective date of the lease and operation exemption was stayed by a decision served September 10, 2001, pending further administrative action. By a decision served on December 12, 2001, the Board, *inter alia*, allowed the OFA process to go forward in the Abandonment Docket and rejected the notice of exemption by which Trinidad sought to lease the line from Kern Valley and operate it.

On January 2, 2002, Trinidad and its parent, A.P. Maxwell Development Company, L.L.C., filed a petition to reopen the December 2001 decision rejecting the notice of exemption. Rail Ventures replied on January 17, 2002.

The decision to reject Trinidad's notice of exemption was based on a finding that Kern Valley should not be allowed to lease the line to anyone while it was negotiating an OFA. The OFA process has subsequently been concluded, with Rail Ventures electing not to purchase the line, after the Board established the purchase price for the line. A decision in the Abandonment Docket served concurrently with this one: (1) terminates the OFA process, (2) vacates the December 2001 decision to the extent it postponed the abandonment and makes the abandonment authority effective today, and (3) denies RTC's request for issuance of a NITU. In light of that decision, the petition for reopening in the present proceeding is now moot and will be dismissed. Kern Valley and Trinidad remain free to negotiate with regard to any future operation of the line.

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

It is ordered:

1. The petition to reopen is dismissed as moot.

2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary