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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-582]

Napa Valley Wine Train, Inc.–Adverse Abandonment–in Napa Valley, CA

On April 6, 2001, the Napa Valley Flood Control and Water Conservation District (District) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the abandonment by the Napa Valley Wine Train, Inc. (NVWT) of segments of NVWT's line located between milepost 67.50 and milepost 68.62, milepost 68.73 and milepost 69.33, and milepost 69.44 and milepost 70.00, in Napa County, CA. The three segments, totaling 2.28 miles, traverse United States Postal Service ZIP Codes 94558 and 94559 and include the stations of Rocktram and Napa, CA.

The District indicates that it filed the adverse abandonment application so it could proceed with plans to construct a federally-approved flood control project on the Napa River. These plans assertedly would require relocating the three segments of NVWT's rail line. According to the District, the relocations would be performed at no cost to NVWT, would provide NVWT with new facilities, and would allow NVWT to continue operations with very little interruption during the relocation phase. The District maintains that NVWT has refused to consent to the relocations unless the District extensively upgrades NVWT's facilities. The District claims that this refusal delays the

flood control project and threatens its federal funding. To overcome NVWT's refusal to consent to the relocations, the District asks the Board to grant adverse abandonment for the segments, so that it can proceed under state condemnation law, if necessary, to relocate the segments, allowing construction of the flood control facilities. This agency and its predecessor have long held that granting an adverse abandonment application would remove this agency's primary jurisdiction over the line, thereby subjecting the line to actions under state law, including condemnation.¹

In a decision served in this proceeding on March 30, 2001, the District was granted a waiver from several requirements of the Board's abandonment regulations in 49 CFR part 1152. Specifically, the District was granted waiver from 49 CFR 1152.10-14 and 1152.24(e)(1) pertaining to system diagram maps, and the publishing and posting notice requirements of 49 CFR 1152.20(a)(3) and (a)(4) and 1152.24(c). The decision also waived certain information required for an abandonment application in 49 CFR 1152.22 and permitted the District to include in its application only: the information called for in 49 CFR 1152.22(a) (1) through (4), and (6) through (8); the limited service information and revenue data which NVWT has provided to it; the name of each station on the line; certain additional information; and a draft Federal Register notice. The District was also granted waiver from the consummation notification requirements in 49 CFR 1152.24(f) and the 1-year authorization limit in 49 CFR 1152.29(e)(2). However,

¹ See Modern Handcraft, Inc.—Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban., 7 I.C.C.2d 216, 224-26 (1990); and Chelsea Property Owners—Aban.—The Consol. R. Corp., 8 I.C.C.2d 773, 778 (1992), aff'd sub nom. Conrail v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

the District complied with the pre-filing notice requirements of 49 CFR 1152.20(a)(1) and (2) and 1152.20(b)(1) and served copies of its application on NVWT, the shipper served by the line,² and other parties listed in 49 CFR 1152.20(a)(2).

The District states that, to the best of its knowledge, the line does not contain federally granted rights-of-way. Any documentation in the District's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case) by May 21, 2001. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by May 21, 2001. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27). However, as noted in the March 30 decision, the District sought waivers and exemptions from the OFA procedures in 49 CFR 1152.27 and 49 U.S.C. 10904, the public use procedures in 49 CFR 1152.28 and 49 U.S.C. 10905, and the trail use/rail banking procedures in 49 CFR 1152.29. These requests will be

² The only shipper that is identified as being served by the line is B.P.B. Marco Paper Co. See Exhibit C to the District's petition.

addressed in the decision on the merits. The due date for applicant's reply is June 5, 2001.

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to section 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-582 and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001 and (2) William A. Mullins, Troutman Sanders LLP, 401 9th Street, NW, Suite 1000, Washington, DC 20004-2134. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

The March 30 decision noted that the District had requested waiver from the environmental and historic preservation reporting requirements found in 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f), arguing that its proposal has no

environmental impact and therefore qualifies for treatment under 49 CFR 1105.6(c).

However, the March 30 decision indicated that the District should make that showing in its application, rather than seeking a waiver.

In its application, the District asserts the environmental and historic review process has already been completed and certified through an environmental impact statement (EIS) prepared by the U.S. Army Corps of Engineers. The District further argues that the proposal is more like a rail relocation than an abandonment and consequently is exempt from environmental review because it would not exceed the thresholds set by the Board at 49 CFR 1105.7(e)(4 and 5). According to the District, the only effects of the relocation would be brief interruptions to NVWT's freight traffic during the six weeks of construction.

The Board's Section of Environmental Analysis (SEA) has determined that there is no need for additional environmental or historic review of the District's proposal. Any environmental/historic review performed by the Board would be duplicative and contrary to the goals of the National Environmental Policy Act. SEA also agreed with the District that no further environmental analysis is warranted because the proposed actions would not result in impacts that would exceed the thresholds set forth in section 1105.7(e)(4 and 5). Questions concerning environmental issues may be directed to SEA at (202) 565-1545. [TDD for the hearing impaired is available at 1-800-877-8339.]

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Decided: April 20, 2001

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

Vernon A. Williams

Secretary