

SERVICE DATE - MAY 15, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.–ABANDONMENT EXEMPTION–
IN LAS ANIMAS COUNTY, CO

Decided: May 10, 2002

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures for out-of-service rail lines at 49 CFR 1152.50 to abandon a 28-mile segment of rail line in Las Animas County, CO, between milepost 2.0 at Jansen and the end of the Trinidad line at milepost 30.0 (the Line).¹ Notice of the exemption was served and published in the Federal Register on September 21, 2000 at 65 FR 57239. Before the notice went into effect, however, Rail Ventures, Inc. (Rail Ventures) timely filed a notice of its intent to invoke the Offer of Financial Assistance (OFA) provisions of 49 U.S.C. 10904 in order to acquire the line for continued rail service. That filing, and subsequent extensions, stayed the effective date of the abandonment exemption covered by the notice.² On December 5, 2000, Rail Ventures timely filed its OFA, offering to purchase the Line.

Shortly before that, however, on October 31, 2000, after having received notice of Rail Ventures' forthcoming OFA, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority in this proceeding) to Kern Valley Railroad Company (Kern Valley), which subsequently invoked the class exemption procedures at 49 CFR 1150.31 to obtain authorization for the purchase. Kern Valley Railroad Company–Acquisition and Operation Exemption–Trinidad Railway, Inc., STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000). 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. Kern Valley also acknowledged that the

¹ The procedural history of this and related proceedings is set out more fully and most recently in our January 15, 2002 decision. At the time Trinidad submitted the notice to abandon, the line had not carried any traffic for at least 4 years.

² The Rails to Trails Conservancy (RTC) has requested issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate for the acquisition of the right-of-way for rail banking and interim use as a trail. However, because an OFA takes priority over a request for a NITU, RTC's request has been held in abeyance pending the outcome of the OFA process.

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.

A decision served December 8, 2000 found that Rail Ventures was a financially responsible entity and that it intended to restore rail service. That decision also denied a request by Kern Valley to reject the OFA and a request by RTC to dismiss the OFA. In a decision served August 13, 2001, addressing various challenges to the propriety of Kern Valley's acquisition and of Rail Ventures' OFA, the Board affirmed the prior decisions approving Kern Valley's purchase and finding Rail Ventures to be financially responsible under section 10904. The Board also stated that either party could ask it to establish the terms and conditions for an OFA purchase of the line, if no agreement on a purchase price could be reached.

The parties were unable to reach an agreement. Accordingly, on March 18, 2002, the Board was asked to set the terms and conditions of sale and, in a decision served April 17, 2002, the Board set the purchase price for the Line at \$3,830,697 (the net liquidation value of the Line), and terms for transfer of the Line were established, including a condition that Rail Ventures maintain a rail weight suitable for unit-train coal traffic.

By a pleading filed on April 29, 2002, Rail Ventures states that it accepts all of the terms and conditions of sale established by the Board, including the purchase price and the retention of 115-pound rail on the line. Under these circumstances, the Board's decision is binding on both parties and the Board is required to approve the transaction and to dismiss the notice of abandonment exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(h)(7). Accordingly, the sale will be approved and the notice will be dismissed.

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

It is ordered:

1. Under 49 U.S.C. 10904, Rail Ventures is authorized to acquire the rail line described above.
2. Under 49 U.S.C. 10904 and 49 CFR 1152.27, the notice of abandonment exemption is dismissed, effective on the date the sale is consummated.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary