

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

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

STB Finance Docket No. 33956¹

KERN VALLEY RAILROAD COMPANY — ACQUISITION AND OPERATION
EXEMPTION — TRINIDAD RAILWAY, INC.

Decided: August 9, 2001

In these cases we are presented with two issues. One issue is whether, after the rail line in the case had been proposed to be abandoned and after the offer of financial assistance (OFA) forced-sale procedures of 49 U.S.C. 10904 had been initiated, the line could be sold to a third party who acquired the line not to avoid abandonment but rather to step into the shoes of the entity that sold the line to it. The other issue is whether the OFA in this case qualifies under section 10904. We find that the sale fully preserved the rights of the OFA offeror and that the offeror has made a sufficient showing that its offer qualifies for section 10904.

BACKGROUND

1. The Abandonment Request and Proposals For Alternatives to Abandonment of the Line.

In STB Docket No. AB-573X, Trinidad Railway, Inc. (Trinidad), which owned a 30-mile rail line in southern Colorado, invoked the class exemption procedures of 49 CFR 1152.50² in September 2000 to abandon a 28-mile segment of the line between Jansen³ and the former New Elk Mine in Las Animas County. At the same time, The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) invoked those same

¹ These proceedings are not consolidated; a single decision is being issued for administrative convenience.

² The Board's class exemption procedures at 49 CFR 1152.50 provide expedited means to abandon or discontinue service over lines that have not originated or terminated any freight in at least 2 years.

³ Trinidad called this location "Jensen," but the route map included in its notice of exemption showed "Jansen."

procedures to discontinue their trackage rights over the line to be abandoned.⁴ The line has not carried any traffic since March 1996; prior to that time the only shipper using the line was a coal mine that is now closed.

The abandonment authority was scheduled to become effective on October 20, 2000. But prior to that date, on October 2, 2000, Rail Ventures, Inc. (Rail Ventures or the offeror) filed a timely notice of its intent to invoke the OFA provisions of 49 U.S.C. 10904 in order to acquire the line to enable future restoration of rail service. That filing, and subsequent extensions, have stayed the effective date of the abandonment authority.

Also, the Rails to Trails Conservancy (RTC) requested issuance of a notice of interim trail use (NITU) for the 28-mile segment under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with Trinidad for the acquisition of the right-of-way for rail banking and interim use as a trail. Trinidad indicated its willingness to negotiate with RTC for interim trail use. However, because an OFA takes priority over a request for a NITU, RTC's request was held in abeyance, in a decision served October 20, 2000, pending the outcome of the OFA process.⁵

2. The Intervening Sale of the Line and Other Parties' Objections to That Sale.

Notwithstanding the notice that it had been given of Rail Ventures' forthcoming OFA, on October 31, 2000, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority) outside of the section 10904 process to Kern Valley Railroad Company (Kern Valley or the buyer). A week after the sale, on November 6, 2000, in STB Finance Docket No. 33956, Kern Valley belatedly filed a notice of exemption under 49 CFR 1150.31 to obtain regulatory authorization for the purchase. The exemption became effective on November 13, 2000.⁶ In its filing, the buyer explained that it did not acquire the line segment to

⁴ See the notice published in the Federal Register on September 21, 2000 (65 FR 57239-40) in STB Docket No. AB-573X and in the embraced proceedings in STB Docket No. AB-6 (Sub-No. 388X), The Burlington Northern and Santa Fe Railway Company — Discontinuance of Trackage Rights Exemption — in Las Animas County, CO and STB Docket No. AB-33 (Sub-No. 160X), Union Pacific Railroad Company — Discontinuance of Trackage Rights Exemption — in Las Animas County, CO.

⁵ The Board's October 20 decision also imposed environmental and historic preservation conditions upon abandonment and salvage of the line, should the line ultimately be authorized for abandonment.

⁶ In STB Finance Docket No. 33957, Kern W. Schumacher and Morris H. Kulmer — Continuance in Control Exemption — Kern Valley Railroad Company, Messrs. Schumacher and
(continued...)

provide rail service, but rather to salvage the rail property once it is abandoned. Kern Valley's intent was to step into the shoes of Trinidad for purposes of the abandonment request, and Kern Valley acknowledged that the line remains subject to section 10904, to RTC's request for issuance of a NITU, and to the environmental and historic preservation measures the Board had imposed as conditions of abandonment.

On November 28, 2000, RTC filed a petition to revoke Kern Valley's authority to acquire the line as an improper use of the exemption, in view of the fact that Kern Valley does not intend to operate the line.⁷ Alternatively, RTC argues that the abandonment proceeding should be dismissed and that Kern Valley should be required to institute a new proceeding to obtain abandonment authority itself.⁸ On December 5, 2000, Rail Ventures also petitioned to revoke the acquisition exemption, arguing that a party should not be allowed to acquire a rail line for the sole purpose of abandoning the line. We rule on both parties' petitions in this decision.

3. The OFA and Responses to It.

Rail Ventures filed its OFA on December 5, 2000, offering to buy the line for \$2.5 million. Kern Valley immediately asked us to reject the OFA on the ground that the offer is not for restoring rail freight service.⁹ RTC also filed a motion, on December 7, to dismiss the OFA on the same ground or, alternatively, to hold the OFA process in abeyance pending disposition of the petitions to revoke Kern Valley's authority to acquire the line.

⁶(...continued)

Kulmer concurrently filed a verified notice to continue in control of Kern Valley upon its becoming a Class III rail carrier. See 65 FR 69991-92 (notice of exemption published in the Federal Register on Nov. 21, 2000). Messrs. Schumacher and Kulmer also indirectly control the Tulare Valley Railroad Company, a short line railroad located in California. Kern Valley Reply in STB Finance Docket No. 33956, Dec. 4, 2000, at 3.

⁷ On June 5, 2001, RTC submitted new evidence allegedly containing an "admission against interest" on the part of the owners of Kern Valley. RTC demonstrated that the new evidence — a verified statement, dated March 23, 2001, submitted in another Board proceeding — did not exist at the time it petitioned to revoke Kern Valley's authority to acquire the line. We will consider this evidence below.

⁸ Kern Valley has replied.

⁹ Kern Valley was granted leave to intervene in the abandonment proceeding in a decision served November 21, 2000. Kern Valley erroneously filed its petition to reject the OFA in the related acquisition case, but we take administrative notice of it in the abandonment exemption proceeding.

4. Previous Rulings.

In a decision served December 8, 2000 (December 8 Decision), the Director of our Office of Proceedings, acting under delegated authority, found that Rail Ventures was a financially responsible entity and denied Kern Valley's petition to reject the OFA. The Director also denied RTC's motion to dismiss the OFA and its alternative requests for maintaining the status quo. The Director's decision allowed the OFA process to proceed and set January 4, 2001, as the deadline for either Rail Ventures or the seller (now Kern Valley) to request that the Board establish the terms and conditions for an OFA sale of the line, in the event the parties were unable to agree.

On December 15, 2000, Kern Valley filed an administrative appeal of the December 8 Decision and a request to postpone the January 4 deadline pending disposition of the appeal. On December 20, RTC also filed an administrative appeal of the December 8 Decision. In a decision served December 22, 2000, the due date for a request to establish the terms and conditions of the sale was extended until 30 days after we rule on the appeals.¹⁰

In a decision served February 22, 2001, a proceeding was instituted under 49 U.S.C. 10502(d) to consider RTC's and Rail Ventures' petitions to revoke Kern Valley's authority to acquire the line. Kern Valley has also filed an administrative appeal of that decision, to which RTC has responded.

We will now address the various pending appeals and petitions to revoke.

DISCUSSION AND CONCLUSIONS

1. Petitions to Revoke Kern Valley's Authority to Acquire the Line.

Rail Ventures and RTC have asked us to revoke the exemption that permitted Kern Valley to acquire this rail line, on the ground that Kern Valley does not intend to operate freight service over it. Both petitioners cite Land Conservancy — Acq. & Oper. — Burlington Northern, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998), pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000) (Land Conservancy). In that case, we used our revocation power to disallow the sale of an active (albeit embargoed) line to a purchaser who had immediately after the purchase sought to abandon the line and to be exempted

¹⁰ RTC's December 20 appeal included a request that the OFA process be stayed pending final disposition of the petitions to revoke that had been filed in the related acquisition case. The December 22 decision denied that stay request.

from the OFA process. We took that action to protect our regulatory processes.¹¹ Here, in contrast, Kern Valley has made it clear that it does not seek to avoid our regulatory processes. Rather, it merely sought to step into the shoes of Trinidad; Kern Valley has stated that the line would remain subject to the section 10904 OFA process, the trail use negotiation process, and the environmental conditions attached to any abandonment. Thus, there is no need to revoke the exemption to protect the integrity of our regulatory processes as in Land Conservancy.

In this case, we do not believe that allowing Kern Valley to step into Trinidad's shoes will undermine the OFA process. Rail Ventures' rights as a prospective buyer of the line under section 10904 are fully preserved. The effect of the sale, as to Rail Ventures, is that it must now negotiate OFA terms with Kern Valley rather than Trinidad. If the parties do not agree to terms of sale, either party may ask us to set the terms under section 10904, and the seller will be bound by the terms that we set. Thus, Kern Valley can neither escape a sale of the line under section 10904 (if Rail Ventures is willing to proceed) nor dictate the terms of any such OFA sale.¹²

Kern Valley has indicated that its purchase is subject to the rights of RTC to negotiate the acquisition of the right-of-way for interim trail use should the OFA sale not be completed.¹³ But a railroad that has expressed its willingness to negotiate for trail use may withdraw its consent to negotiation at any time. Therefore, we cannot require the sale of a line for trail use or impose the terms of such use. Here, Trinidad was aware of RTC's request to negotiate for trail use, and notwithstanding its initial statement that it would negotiate for a trail use arrangement, evidently chose instead to sell the line to Kern Valley outside of the Trails Act process. Because trail use negotiations are not compulsory, we find that RTC has no rights that were violated by the sale of

¹¹ Specifically, in Land Conservancy we required the purchaser to sell the line back to the original owner, which would then be free to itself seek authority to abandon the line, subject to the section 10904 OFA process.

¹² For similar reasons, our decision in Railroad Ventures, Inc. — Abandonment Exemption — Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, et al., STB Docket No. AB-556 (Sub-No. 2X), et al. (STB served Oct. 4, 2000), does not support revocation of Kern Valley's acquisition exemption, as RTC and Rail Ventures argue. In that case, the owner of the line attempted to sell portions of the rail assets to a third party during the pendency of an OFA process for the express purpose of excluding those assets from the section 10904 sale. We voided the outside sales and ordered the owner to convey all of the rail assets in the line sought by the OFA purchaser. In contrast, here Kern Valley has conceded that all of this property remains fully subject to Rail Ventures' rights under section 10904. Assuming that the section 10904 OFA process moves forward to completion, Kern Valley will be required to sell to Rail Ventures all of the rail assets it purchased from Trinidad.

¹³ Kern Valley Reply in Finance Docket No. 33956, filed Dec. 4, 2000, at 8.

the line to Kern Valley. In any event, RTC has not shown that Kern Valley's plans for this line would be inconsistent with trail use and that Kern Valley would not proceed with Trails Act negotiations.

Nor do we view a more recent statement made to us by the principals of Kern Valley in a different proceeding¹⁴ (see supra note 7) as evidence of the impropriety of Kern Valley's acquisition of the Trinidad line. In that other proceeding, SF&L Railway, Inc. (SF&L) — an entity controlled by Messrs. Kulmer and Schumacher, who are the principals of Kern Valley — purchased an operating easement over, and the rail, ties, and improvements on, but not the underlying right-of-way of, a 71.5-mile rail line that was actively being operated by the seller and for which there had not been a request for abandonment authority. In response to a challenge to the bona fides of SF&L's purchase of the operating easement, Messrs. Kulmer and Schumacher stated that, if they had purchased the easement and track materials for the sole purpose of abandoning the existing freight service and salvaging the track, SF&L's use of the class exemption at 49 CFR 1150.31 would have been improper. That statement, however, has no relevance in this case, where the line was inactive, there was a pending request to abandon this rail line, and Kern Valley acknowledged that it would have the same obligations as Trinidad regarding statutory alternatives to abandonment (i.e., OFA and Trails Act processes).

In sum, while the circumstances here are unusual, neither Rail Ventures nor RTC has shown how its rights have been prejudiced by Kern Valley's purchase. Having found no evasion of our regulatory processes, we are denying the petitions to revoke Kern Valley's acquisition exemption.

2. Challenges to the OFA.

a. Financial Responsibility Finding. In the abandonment proceeding, Kern Valley and RTC (jointly, appellants) ask us to reverse the Director's finding in the December 8 Decision that Rail Ventures qualifies as a financially responsible offeror under section 10904. Appellants assert that Rail Ventures has not provided financial information about itself, and they also challenge the offeror's statements concerning financing sources. Specifically, appellants argue that: a tentative financing source identified by Rail Ventures (Regatta Capital, Ltd.) has indicated that it is not familiar with the offeror; a second prospective funding source (United Railroad Services Company) has offered only to buy the line's 115-pound rail and replace it with

¹⁴ SF&L Railway, Inc. — Acquisition and Operation Exemption — Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33395.

90-pound rail; and a third prospective source of bridge financing, The Tie Yard of Omaha, NE, has now stated that it has no intention of providing bridge financing for the line.¹⁵

While Kern Valley's evidence is clearly relevant, it does not persuade us that the Director's finding of financial responsibility must be reversed. We agree that a commitment letter or other expression of interest in financing the purchase, as well as profiles of the named companies establishing their ability to provide financing (Appeal at 6), would be probative, but we do not believe that the presence or absence of these is dispositive. Here, Rail Ventures seeks to finance the purchase through a creative combination of funding sources. For example, an offer from United Railroad Service Company to buy the existing 115-pound rail in the line and replace it with 90-pound rail would provide Rail Ventures with some of the funds that it would need.¹⁶ We do not believe that Rail Ventures should be foreclosed at this stage from pursuing this and other funding options.

Both Kern Valley and RTC will be fully protected against undue delay or the possibility that Rail Ventures ultimately may not obtain sufficient funds to complete the purchase. Once we allow the OFA process to go forward, there will be a 30-day period for negotiations between Kern Valley and Rail Ventures. If the parties do not agree to terms of sale, either party may ask us to set the terms and conditions and we will then have 30 days to do so. Upon our setting the terms, Rail Ventures will have 10 days to accept or reject the terms. If it cannot arrange the

¹⁵ In addition to submitting timely evidence concerning Regatta Capital and United Railroad Services, Kern Valley also sought, out of time, to submit supplemental evidence concerning Rail Ventures' claim of an offer of bridge financing through The Tie Yard of Omaha, NE. (December 20, 2000 Request for Leave to Supplement.) Kern Valley later sought to further supplement the record with a copy of a newspaper article covering a meeting of the Las Animas County Commission at which the principal of Rail Ventures discussed the status of its request for authority to purchase the line. (January 18, 2001 Request for Leave to Supplement.) Although Kern Valley relied upon the general provision of 49 CFR 1117.1 for these late-filed submissions, it did not explain why we should allow the supplemental evidence into the record, as section 1117.1 requires. Nevertheless, because no one opposed the introduction of this supplemental evidence, and in the interest of a complete record, we accept the supplemental evidence into the record.

¹⁶ OFA at 4. That offer is confirmed by Kern Valley's evidence. See Attachment B to Kern Valley Appeal. The high value of the 115-pound rail is confirmed by another company's offer to purchase and remove the existing rail for approximately \$2.3 million. See Appendix 1 to OFA filed Dec. 5, 2000.

necessary funding to meet the terms of sale, Rail Ventures will have to walk away, and Kern Valley will be in the same position it would have been in had we granted the relief it seeks here. Further, if the section 10904 sale falls through, RTC's opportunity to negotiate to purchase the right-of-way and establish an interim trail will be activated, if Kern Valley continues to be willing to negotiate.

b. Reasonable Prospect of Restoring Rail Freight Service. Kern Valley and RTC argue that Rail Ventures' offer does not qualify under section 10904 because, they assert, Rail Ventures does not plan to haul freight, but rather only to establish a tourist excursion train on the line.¹⁷ They note that the only shipper on the line, the New Elk Mine, has been closed for some years, and they maintain that Rail Ventures' statements regarding potential freight are self-serving and unsupported. They cite Roaring Fork Railroad Holding Authority — Abandonment Exemption — In Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999) (Roaring Fork), aff'd sub nom. Kulmer v. STB, 236 F.3d 1255 (10th Cir. 2001) (Kulmer), for the principle that the Board must reject an OFA where there is not a reasonable prospect of continued or restored rail freight service.

But nothing in section 10904 precludes a line from being acquired under the OFA procedures to provide combined passenger/freight service, and indeed there are situations where, as here, it is the inclusion of passenger operations that would seem to make it financially viable for an operator to offer continued (or restored) freight service. See, e.g., Union Pacific Railroad Co. — Abandonment Exemption — In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (STB served Apr. 21, 1999) at 3 (allowing challenged OFA offer to go forward where offeror intended to provide tourist passenger service in addition to freight service).

¹⁷ Appellants cite Napa Valley Wine Train, Inc. — Pet. for Declaratory Order, 7 I.C.C.2d 954 (1991), for the proposition that the Board does not have regulatory authority over single-state passenger excursion trains. But as we discuss further, Rail Ventures plans to conduct both freight and passenger excursion operations on the line. These two types of rail use are not mutually exclusive, and we clearly have regulatory authority over the rail freight operations.

Roaring Fork is distinguishable. There, the combined passenger/freight service proposed by Messrs. Kulmer and Schumacher¹⁸ in their OFA was no different from what the owner of the line, Roaring Fork Railroad Holding Authority (RFRHA), planned to provide.¹⁹ We found that it would be a misuse of section 10904 to wrest a rail line from its owner (RFRHA) only to give it to others (Kulmer and Schumacher) who wanted to put it to the same intended use. Roaring Fork at 5-6. Moreover, because RFRHA had access to \$40 million in Congressional funds earmarked for its proposed passenger service — funds which were not available to Kulmer and Schumacher — that case “present[ed] the anomalous situation in which any future reestablishment of rail freight service (as an adjunct to passenger service) appear[ed] to be more likely under RFRHA’s own plans for the future of the right-of-way than through the OFA process.” Id. at 6 n.19; Kulmer, 236 F.3d at 1258. Accordingly, we found that “the statutory objective of continued freight rail service would not be likely to result from [the] OFA proposal.” Roaring Fork at 5.

Here, in contrast, Rail Ventures intends to “commence an aggressive marketing effort” to restore freight service on the line. OFA at 3. Rail Ventures cites the prospect of future coal shipments in light of the fact that the area’s coal is low in sulfur content and marketable under current environmental regulations, id., — a prospect enhanced by the Federal government’s recent projection that domestic coal demand will increase in the next two decades.²⁰ Rail Ventures also points to the potential for carrying pipe to be used for developing coal-bed methane gas, a fuel source currently under exploration near Trinidad, CO. OFA at 3. Finally, Rail Ventures discusses prospects of carrying crushed rock for construction and of transporting rail cars and locomotives to a modern repair facility that is located on the line. Id. at 4.

Kern Valley and RTC question the likelihood of any of this traffic materializing. Kern Valley cites Conrail Abandonment West 30th Street, NY, Docket No. AB-167 (Sub-No. 493N) (ICC served Jan.13, 1987) for the proposition that this agency must determine whether there is sufficient traffic available to sustain the line’s operation for the next two years, and it argues that Rail Ventures has failed to make such a showing. Kern Valley misapprehends both what needs to be shown and what Rail Ventures has shown in this case.

¹⁸ In addition to controlling Kern Valley, Messrs. Kulmer and Schumacher are also the principals of A&K Railroad Materials, Inc. See Kern Valley Reply, Dec. 4, 2000, at 2-3, 8 (using the terms “Kern Valley,” “A&K,” and “Messrs. Kulmer and Schumacher” interchangeably).

¹⁹ RFRHA had indicated that it would restore rail freight service if there were a sufficient demand. Roaring Fork at 6 n.19.

²⁰ See U.S. Dep’t of Energy, Energy Information Admin., Annual Energy Outlook 2001 With Projections to 2020, Dec. 2000, at 95 (available at www.eia.doe.gov/oi/af/aeo).

In determining whether there are sufficient traffic prospects to enable Rail Ventures to operate the line between Jansen and the Elk Mine, we consider all potential income resulting from the operation of the rail line. In this case, that includes income from passenger operations. It is obvious that Rail Ventures expects significant income from passenger operations here, and the record is full of un rebutted evidence to support that expectation. Thus, rail freight need not provide all of the income that would be needed to cover the cost of owning, maintaining and operating the line for two years. Again, this case is distinguishable from Roaring Fork, where the offerors mentioned passenger service but cited no plan or proposal or any support for it. Indeed, the fact that in that case the abandoning carrier, RFRHA, was to receive a \$40 million Congressional authorization for the operation of rail passenger service suggests that the passenger service would not be self-sustaining. Thus the argument that the OFA in Roaring Fork constituted a legitimate effort to continue rail service depended far more heavily than here on the demand for rail freight service.

Kern Valley disparages Rail Ventures' projections of freight traffic, but its criticisms miss the point. We are less concerned about the extent of the demand for service than we are about an offeror's willingness and ability to meet such a demand. The record offers ample support for the proposition that Rail Ventures is an entrepreneurial company eager to make money by providing rail service. The offeror may expect to see more income sooner from passenger service, but we see nothing in the record to support the notion that Rail Ventures would not also pursue the opportunity to make money hauling freight. Indeed, the considerable fixed cost of providing any sort of rail service constitutes a stimulus to maximize use of the rail plant.

In sum, here, unlike in Roaring Fork, the objective of section 10904 — future rail freight service — will have a better chance of being achieved through the OFA sale than if the line remains in the hands of its present owner (Kern Valley), who seeks only to dismantle the line.²¹ With the track that Rail Ventures would need to have in place, and with the common carrier obligation that Rail Ventures would assume, freight service is more likely to be restored if Rail Ventures acquires the line than if Kern Valley abandons it or RTC purchases the right-of-way for interim trail use/rail banking.²² Rail Ventures will have the obligation to transport freight that becomes available.

²¹ Kern Valley purchased this line “for the purpose of salvaging and returning to useful use [elsewhere] the rail, ties, and other track materials of the line. . . .” Kern Valley Reply in Finance Docket No. 33956, filed Dec. 4, 2000, at 2.

²² Even if RTC were to successfully negotiate an interim trail use arrangement on this line, with the track removed it would be far more difficult to restore rail freight service than if Rail Ventures were using the line for rail passenger excursions.

Because we find that Rail Ventures has made a sufficient showing of readiness and ability to restore freight service if shipments become available, and has the strong intention of developing the freight use of this line, the appeals will be denied.

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

It is ordered:

1. In STB Finance Docket No. 33956:
 - a. Kern Valley's motions to reject, filed December 20 and 29, 2000, are denied;
 - b. Kern Valley's appeal of the Board's February 26, 2001 decision instituting this proceeding is denied; and
 - c. RTC's and Rail Ventures' petitions to revoke, filed November 28 and December 5, 2000, respectively, are denied.
2. In STB Docket No. AB-573X:
 - a. RTC's dismissal request, filed November 28, 2000, is denied;
 - b. The appeals of the Board's December 8, 2000 decision, filed December 15, 2000, by Kern Valley, and December 20, 2000, by RTC, are denied; and
 - c. If the buyer and seller cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before September 12, 2001. If no agreement is reached and no request is submitted by that date, the Board will serve a decision partially vacating this decision and allowing the abandonment exemption to become effective, subject to trail use or other appropriate conditions.
3. This decision is effective on August 13, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary