

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-476 (Sub-No. 1X)

PL&W, INC.--ABANDONMENT EXEMPTION--IN
COLUMBIANA COUNTY, OH AND BEAVER COUNTY, PA

Decided: January 9, 1997

PL&W Railroad Company (PL&W) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon its entire line of railroad between milepost 0.0 at Negley, in Columbiana County, OH, and the end of the Smith's Ferry Branch at Smith's Ferry, in Beaver County, PA.¹ A notice of exemption was served and published in the Federal Register on August 5, 1996 (61 FR 40705-06). The exemption became effective on September 4, 1996.

By decision served September 3, 1996, the proceeding was reopened and the exemption was made subject to the condition that PL&W consult with the U.S. Fish and Wildlife Service field office at Reynoldsburg, OH, prior to salvaging the right-of-way.

On December 14, 1996, the Great Ohio Lake to River Greenway and Rails to Trails Conservancy (Proponent) filed a request for a notice of interim trail use/rail banking (NITU) and for a public use condition so that it could negotiate with PL&W for use of the line as a trail.²

By letter filed December 23, 1996, PL&W states that it is not willing to negotiate with Proponent for interim trail use. PL&W states that it has consummated the abandonment authorization effective on or about September 15, 1996, and that the right-of-way is "presently under agreement of sale" to an adjacent landowner. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the National Trails System Act, a right-of-way may be acquired for public use

¹ On January 3, 1997, PL&W informed the Board that the actual mileage for the entire Smith's Ferry Branch is 14 miles and not 9 miles as stated in its verified notice. Because PL&W's verified notice and the notice published by the Board described the line proposed to be abandoned as PL&W's entire line of railroad between milepost 0.0 at Negley, OH, and the end of Smith's Ferry Branch at Smith's Ferry, PA, the line was properly described and provided adequate notice. Misdescription of the total number of miles involved, in this instance, is a harmless error.

² The August 5 notice also provided that requests for trail use/rail banking had be filed by August 15, 1996. The notice stated, however, that the Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. Here, however, the request for a public use condition was not timely filed and PL&W has reported that it has already consummated the abandonment. Under these circumstances, the Board no longer has jurisdiction to impose a public use condition.

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

It is ordered:

1. The requests for issuance of a notice of interim trail use/rail banking and for issuance of a public use condition are denied.

2. This decision is effective on the service date.

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

Vernon A. Williams
Secretary