

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-167 (Sub-No. 1173X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN MADISON COUNTY, IN

Decided: December 30, 1996

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a portion of its line of railroad known as the Honey Creek Secondary between milepost 120.65 and milepost 121.10 in the City of Anderson, Madison County, IN. Notice of the exemption was served and published in the Federal Register on December 5, 1996 (61 FR 64567-68). The exemption is scheduled to become effective on January 4, 1997.

By petition filed November 19, 1996, The City of Anderson (City) filed a request for the issuance of a notice of interim trail use/rail banking (NITU) pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d) and a public use condition, so that it could negotiate with MP for use of the line as a trail.¹

The City requests that Conrail be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, along the right-of-way, except for public use on reasonable terms, and that Conrail be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The City states that it needs the full 180-day period allowed because the planning process which addressees this corridor is not completed, and only brief negotiations have occurred with Conrail. It submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

By letter filed on December 23, 1996, Conrail indicated its willingness to negotiate with the City for interim trail use. In light of Conrail's willingness to negotiate, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within the 180 days, Conrail may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as trail under 49 U.S.C. 10905, Rail Abandonments - Use of Rights-of-Way as Trails

¹ The notice of exemption indicated that the NITU request would be addressed in a subsequent decision. On December 26, 1996, the City reiterated its request for issuance of a NITU.

(Trails), 2 I.C.C.2d 591 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

The City's submission meets the requirements for a public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying: (a) the condition sought; (b) the public importance of the condition; (c) the period of time for which the condition would be effective; and (d) justification for the imposition of the period of time requested. Accordingly, the requested 180-day public use condition will be imposed.

A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found appropriate for public purposes.

When the need for interim trail use/rail banking and public use condition is shown, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on December 5, 1996, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that Conrail leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days (until July 3, 1997), to enable any State or local government agency, or other interested persons to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a

copy of this decision and notice and request that it be vacated on a specific date.

6. If an agreement for interim trail use/rail banking is reached by July 3, 1997, interim trail use may be implemented. If no agreement is reached by that time, Conrail may fully abandon the line.

7. The decision is effective on the service date.

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

Vernon A. Williams
Secretary