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SERVICE DATE- DECEMBER 3, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-439 (Sub-No. 4X)

DALLAS AREA RAPID TRANSIT--ABANDONMENT EXEMPTION--
IN DALLAS COUNTY, TX

Decided: November 30, 1999

Dallas Area Rapid Transit (DART) and Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for DART to abandon and UP to discontinue service over a 3.04-mile line of railroad known as the Athens Branch East between milepost 308.80 at Pleasant Drive to the end of the track at milepost 305.76 at Rylie Road, in Dallas County, TX. Notice of the exemption was served and published in the Federal Register on November 4, 1999 (64 FR 60261-62). The exemption is scheduled to become effective on December 4, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 9, 1999. In the EA, SEA states that the Texas Natural Resource Conservation Commission (TNRCC) indicates that it does not anticipate significant long term environmental impacts from this project as long as construction and waste disposal activities associated with it are completed in accordance with applicable local, state and federal environmental permits and regulations. TNRCC requests that DART take necessary steps to ensure that best management practices to control runoff from construction sites be utilized to prevent detrimental impact to surface and ground water, and identifies Mr. Clyde Bohmfalk, Policy and Regulations Division (512) 239-1315, as the contact person. TNRCC also states that, although any demolition, construction, rehabilitation or repair project will produce dust and particulate emissions, these actions pose no significant impact upon air quality standards and the minimal dust and particulate emissions can easily be controlled with standard dust and mitigation techniques by the construction contractors. TNRCC identifies Mr. Ken Gathright, Air Quality Planning and Assessment Division (512) 239-0774, as the contact person for air quality. Accordingly, SEA recommends imposition of a condition requiring that, prior to salvage operations, DART consult with Mr. Clyde Bohmfalk, Policy and Regulations Division (512) 239-1315, concerning surface and ground water, and Mr. Ken Gathright, Air Quality Planning and Assessment (512) 239-0774, concerning air quality.¹

On November 29, 1999, TNRCC filed an additional letter stating that it has been determined that an Application for Approval of Floodplain Development Project need not be filed, but the records indicates that the community is a participant in the National Flood Insurance

¹ Mr. Wayne Young was initially identified in the EA as the contact person concerning air quality, but TNRCC subsequently stated that the contact person is Mr. Ken Gathright.

Program and has a Flood Hazard Prevention Ordinance/Court Order. TNRCC states that care should be taken to ensure that the proposed construction takes into account the possible Flood Hazard Areas within the community's floodplains. TNRCC also states that questions regarding water quantity should be directed to Mr. Mike Howard, Water Quantity Division (512) 239-6155. TNRCC finally states that the Office of Planning, Remediation Division, has reviewed the project and does not believe that it will have any adverse environmental effects, but states that, if there are questions regarding waste remediation, Mr. Randy Arnett (512) 239-2467 is the contact person. Therefore, SEA recommends that DART notify the community floodplain administrator to ensure that all construction is in compliance with the community's Flood Hazard Prevention Ordinance/Court Order; that questions regarding water quantity be directed to Mr. Mike Howard, Water Quantity Division (512) 239-6155; and that questions regarding waste remediation be directed to Mr. Randy Arnett.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed October 7, 1999, the City of Dallas Trinity River Corridor Project (City), a governmental agency interested in transportation, recreation, natural resources, flood control and economic development filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it can negotiate with DART for acquisition of the right-of-way for use as a recreational trail.²

The City requests that DART be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that DART 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 because it has not had an opportunity to complete a trail plan or commence negotiations with DART. The City submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for payment of taxes for, the right-of-way, as required at 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 October 12, 1999, DART stated that it is willing to consider use of the line in accordance with 49 U.S.C. 10905 [public use] and plans to rail bank the line and retain its interest in the right-of-way for possible future use as a transportation corridor. On October 21, 1999, DART advised the Board that it is willing to negotiate with the City for interim trail use.

The City's request complies with the requirements of 49 CFR 1152.29 and DART is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no

² The notice of exemption indicated that the NITU request would be addressed in a subsequent decision.

further Board action is necessary. If no agreement is reached within 180 days, DART 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 a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (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.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The City has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, DART must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, DART is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, 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 exemption for abandonment of the line described above is subject to the conditions that DART shall: (a) consult with Mr. Clyde Bohmfalk, Policy and Regulations Division, concerning surface and ground water, and Mr. Ken Gathright, Air Quality Planning and Assessment, concerning air quality; (b) notify the community floodplain administrator to ensure that all construction is in compliance with the community's Flood Hazard Prevention Ordinance/Court Order; (c) contact Mr. Mike Howard, regarding water quantity; and (d) contact Mr. Randy Arnett if there are questions regarding waste remediation.

3. The notice of exemption served and published on November 4, 1999, 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 and subject to the condition that DART keep intact the right-of-way underlying the track, including bridges, trestles, culverts (but not track or track material or signal equipment), for a period of 180 days from the December 4, 1999 effective date (until June 1, 2000), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before 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.

4. 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, and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

7. 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 specified date.

8. If an agreement for interim trail use/rail banking is reached by June 1, 2000, interim trail use may be implemented. If no agreement is reached by that time, DART may fully abandon the line.

9. This decision is effective on its service date.

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

Vernon A. Williams
Secretary