

SERVICE DATE – JULY 24, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-389 (Sub-No. 1X)

GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL  
RAILROAD CO., INC. — ABANDONMENT AND DISCONTINUANCE  
EXEMPTION — BETWEEN ALBANY AND DAWSON, IN TERRELL,  
LEE, AND DOUGHERTY COUNTIES, GA

Decided: July 21, 2006

In a decision and notice of interim trail use (NITU) served on August 16, 1996 (August 1996 decision), the Board found that Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS), should be exempted from the prior approval requirements of 49 U.S.C. 10903-04 to abandon its 13.62-mile line of railroad between milepost 86.5 at Albany and milepost 72.88 at Sasser (the line). A NITU was issued that provided a 180-day period for GGS and the Chehaw Park Authority (Chehaw) to negotiate an interim trail use/rail banking agreement that would avoid abandonment of the 13.62-mile line segment between Albany and Sasser.<sup>1</sup> Subsequently, Rails To Trails Conservancy (RTC) was substituted for Chehaw as the negotiating party, and in October 1997, the parties advised the Board that they had reached an interim trail use agreement.

In the meantime, GGS's parent, RailTex, Inc. (RailTex), had transferred the line, and various other rail lines, from a rail subsidiary that it controlled, South Carolina Central Railroad Co., Inc. (SCCR), to Georgia Southwestern Railroad, Inc. (GSWR), another RailTex subsidiary. See RailTex, Inc.—Corporate Family Transaction Exemption—Georgia and Alabama Lines, South Carolina Central Railroad Co., Inc. and Georgia Southwestern Railroad, Inc., Finance Docket No. 32682 (ICC served Apr. 20, 1995). Accordingly, it was GSWR that entered into the interim trail use/rail banking agreement with RTC. South Georgia Rails to Trails, Inc. (SGRT) was subsequently substituted as trail sponsor.

Subsequently, SCCR acquired all of GSWR's rail lines and leased those rail lines back to GSWR. See Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family Transaction—South Carolina Central Railroad, Inc., STB Finance Docket No. 34144 (STB served Jan. 18, 2002). According to GSWR, to ensure that it held the exclusive

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<sup>1</sup> The August 1996 decision was made subject to a historic preservation condition and three environmental conditions, requiring that GGS (1) consult with the U.S. soil conservation service prior to engaging in any salvage activities, (2) protect endangered species during salvage activities, and (3) avoid adverse impacts to waterways and wetlands.

right to reactivate rail service on this line, it acquired from SCCR any and all rights SCCR might have had in this line at that time.

In a decision served on May 16, 2003, the Board granted GSWR's petition to vacate the NITU and also granted petitions for leave to intervene filed by Pioneer Railcorp, and the railroads it owns, and Arkansas-Oklahoma Railroad Company, and the Association of American Railroads (AAR). See Georgia Great Southern Division, South Carolina Central Railroad—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, Ga., Docket No. AB-389 (Sub-No. 1X) (served May 16, 2003) (May 16 decision). By decision served on February 2, 2004, the Board denied RTC/SGRT's joint petition for partial reconsideration of the May 16 decision.

By letter filed on May 24, 2006, SGRT filed a request for the issuance of a NITU for that portion of the line between milepost 77.8 and milepost 86.5 under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. SGRT submitted a statement of willingness to assume financial responsibility for the 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, 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 also filed on May 24, 2006, GSWR indicates that it is willing to negotiate with SGRT for interim trail use over the portion of the line between milepost 77.8 and milepost 86.5.

GSWR states that it has not consummated the abandonment of the line. Because the petition for exemption in this proceeding was filed in 1994, the notice of consummation requirement at 49 CFR 1152.29(e)(2) does not apply.<sup>2</sup>

Because SGRT's request complies with the requirements of 49 CFR 1152.29 and GSWR is willing to negotiate for trail use, 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 further Board action is necessary. If no agreement is reached within 180 days, GSWR may fully abandon the line, provided the conditions imposed in the August 1996 decision are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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<sup>2</sup> See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 2 S.T.B. 311, 317 (1997), in which the Board clarified that the notice of consummation requirement applies only to abandonment proceedings filed after January 23, 1997, the effective date of the abandonment regulations the Board adopted after the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

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 decision and notice served August 16, 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 to permit SGRT to negotiate with GSWR for trail use of the 8.7-mile portion of the line between milepost 77.8 and milepost 86.5.
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 for 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 specified date.
6. If an agreement for interim trail use/rail banking is reached by January 20, 2007, interim trail use may be implemented. If no agreement is reached by that time, GSWR may fully abandon the line, subject to the conditions imposed in the August 1996. See 49 CFR 1152.29(d)(1).
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary