

30110
DO

SERVICE DATE - MARCH 31,1999

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-397 (Sub-No. 3X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE
EXEMPTION--IN TULARE AND FRESNO COUNTIES, CA

Decided: March 26, 1999

By decision served and notice published in the Federal Register on February 9, 1995 (60 FR 7792), the Tulare Valley Railroad Company (TVR) was granted an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon 55.7 miles of rail line including, as pertinent here, a line between milepost 49.8 near Reedley, in Fresno County, CA, and milepost 38.5 near Cutler, in Tulare County, CA, a distance of 11.3 miles (the Cutler Line).

Subsequently, by decisions and notices of interim trail use or abandonment (NITU) served April 24, 1995, August 13, 1996, and April 17, 1997, American Trails Association, Inc. (ATA) was authorized to negotiate interim trail use/rail banking agreements, under the National Trails System Act, 16 U.S.C. 1247(d), with TVR for the Cutler Line. Pursuant to the NITU, ATA negotiated trail use agreements covering most or all of the Cutler Line.

By a pleading filed February 25, 1999, and supplemented March 12, 1999, pursuant to 49 CFR 1152.29(f),² the City of Reedley (Reedley) and ATA request the substitution of Reedley for ATA as interim trail operator for that portion of the Cutler Line between milepost 49+3112.50 at

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute and regulations, unless otherwise indicated.

² Current section 1152.29(f) is essentially the same as the like-numbered pre-ICCTA section.

Manning Avenue and milepost 47+650, 1,100 feet southeast of Buttonwillow Avenue, a distance of approximately 2.47 miles.³

Reedley has filed a statement of willingness to assume financial responsibility that conforms to the requirements for implementing 16 U.S.C. 1247(d), as set forth in 49 CFR 1152.29. Reedley and ATA state that they have reached an agreement in principle for Reedley to succeed ATA as the interim trail manager of the subject segment, effective March 15, 1999. The parties indicate that TVR favors the transfer.

Reedley has made the required showing under 49 CFR 1152.29(f) for the substitution of an interim trail user. Accordingly, the request will be granted.

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. As to the segment between milepost 49+3112.50 and milepost 47+650, the decisions and notices of interim trail use served April 24, 1995, August 13, 1996, and April 17, 1997, are vacated, and Reedley is authorized to replace ATA as the new trail user over the involved right-of-way, effective on the service date of this decision.
3. The new trail user is required 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 new user's continuing to meet the financial obligation for the right-of-way.
5. If the new trail 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. The decision is effective on its service date.

³ In a decision served on September 24, 1998, in this proceeding, the Board vacated a NITU with respect to a segment of the Cutler Line between milepost 38.5 and milepost 47+0650 in response to an ATA notice of intent to terminate trail use.

Docket No. AB-397 (Sub-No. 3X)

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

Vernon A. Williams
Secretary