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SERVICE DATE – MARCH 28, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-857X

GREAT WESTERN RAILWAY OF COLORADO, LLC.—ABANDONMENT  
EXEMPTION—IN WELD COUNTY, CO

Decided: March 24, 2006

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, a distance of approximately 11.7 miles, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on November 10, 2003 (68 FR 63846-47).<sup>1</sup> The exemption was scheduled to become effective on December 10, 2003. On November 14, 2003, however, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Windsor, Severance & Eaton Railroad, LLC (WS&E) to purchase all or a portion of the Eaton Subdivision. The filing of that notice of intent had the effect of automatically staying the effective date of the exemption for 10 days, until December 20, 2003.

On March 24, 2004, WS&E filed a request for permission to withdraw its notice of intent to file an OFA. By a decision and notice of interim trail use or abandonment (NITU) served on April 7, 2004: (1) the proceeding was reopened; (2) WS&E's withdrawal request was granted and the OFA process was terminated; (3) the exemption became effective on the decision's service date, subject to conditions; and (4) a 180-day period was authorized for the Municipalities of Eaton, Severance, and Windsor, CO (Municipalities), to negotiate an interim trail use/rail banking agreement with GWRC for the right-of-way. The negotiating period under the NITU was extended by decisions served on October 27, 2004, April 14, 2005, and September 22, 2005, with the latest extension scheduled to expire on March 28, 2006.

On March 3, 2006, GWRC filed a request to extend the NITU negotiating period for an additional 180 days. GWRC states that it has not consummated the abandonment of the line and the parties are continuing to negotiate an agreement.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended. Under the circumstances, an extension of the negotiating period is

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<sup>1</sup> By decision served November 24, 2003, the proceeding was reopened and the exemption was made subject to two environmental conditions – a historic preservation condition and a National Geodetic Survey (NGS) notification condition. By decision served May 26, 2004, the historic preservation condition was removed. The NGS condition remains in effect.

warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).<sup>2</sup> Accordingly, the NITU negotiating period will be extended for an additional 180 days from March 28, 2006.

On March 15, 2006, Steve and Colleen Nealy, owners of property over which the subject right-of-way traverses, filed a statement objecting to the granting of any further extensions of the negotiating period for trail use. Mr. and Mrs. Nealy maintain that the parties have had ample time to complete an agreement to no avail, and that another extension of the negotiating period will only serve to improperly delay full abandonment of the right-of-way to the prejudice of the Nealys and other property owners along the rail line.

The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim trail use as recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Under the Trails Act, this agency must “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment where a trail sponsor offers to assume managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. See 16 U.S.C. 1247(d); 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, Docket No. AB-389 (Sub No. 1X) (STB served May 16, 2003); Citizens Against Rails to Trails v. STB, 267 F.3d 1144, 1149-50 (D.C. Cir. 2001). Thus, the agency’s primary concern here is with preserving the rail line for future rail service, a purpose served by extending the NITU. Although the parties have not yet been able to conclude a trail use agreement, the instant extension request is an indication that they are still attempting to do so.

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

It is ordered:

1. GWRC’s request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to September 24, 2006.

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<sup>2</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary