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SERVICE DATE - JULY 31, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-167 (Sub-No. 1182X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN INDIANA COUNTY, PA

Decided: July 29, 1998

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an 11.80-mile portion of the Blairsville Secondary Track between milepost 5.70± and milepost 17.50±, in Indiana County, PA. Notice of the exemption was served and published in the Federal Register on March 12, 1998 (63 FR 12148-49). The exemption was scheduled to become effective on April 11, 1998, provided no formal expression of intent to file an offer of financial assistance (OFA) was filed.

By petition filed March 18, 1998, the Cambria and Indiana Trail Council (CITC) filed a request for the issuance of a notice of interim trail use (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with Conrail for acquisition of the right-of-way for use as a trail. The Board's Section of Environmental Analysis (SEA) issued an Environmental Assessment (EA) in this proceeding served March 24, 1998. SEA concluded that the right-of-way may be suitable for public use following abandonment. By letter filed March 30, 1998, Conrail indicated its agreement to a trail use condition on the line.

On April 8, 1998, Kovalchick Corporation (KOV) timely filed a notice of intent to file an OFA. The filing of the notice of intent automatically stayed the effective date of the exemption until April 21, 1998. KOV also requested Conrail to provide it with the financial data and information prescribed in 49 CFR 1152.27(a). Conrail filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to permit it to develop and submit the required information. By decision served April 10, 1998, Conrail was directed to provide KOV with the requested information, the deadline for KOV to file its OFA was extended to June 10, 1998, the effective date of the exemption was extended to June 20, 1998, and the requests for issuance of a NITU and for issuance of a public use condition were held in abeyance pending completion of the OFA process.

On June 10, 1998, KOV submitted an offer to purchase the 11.80-mile line. By decision served June 15, 1998, KOV was found financially responsible and its offer bona fide and reasonable to initiate negotiations. The June 15 decision also postponed the effective date of the decision authorizing abandonment of the line in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed, and provided that either party could request the Board to

set sale terms and conditions. A request to set the terms and conditions of sale was due on or before July 10, 1998.

On July 20, 1998, KOVC submitted a letter stating that it and Conrail had failed to agree on the amount or terms in order for KOVC to purchase the line. KOVC further stated that it would not be requesting that the Board establish the conditions and amount of compensation. Accordingly, the June 15 decision will be vacated and, subject to the matters discussed below, the exemption will be permitted to go into effect.

The Board in its April 10 decision held the requests for issuance of a notice of interim trail use and for issuance of a public use condition in abeyance pending completion of the OFA process. With the termination of the OFA process, it is now appropriate to issue a notice of interim trail use or abandonment and to impose a public use condition.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment described above is subject to the condition that Conrail keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the effective date of the exemption (in this case the service date of this decision) 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 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.
3. The decision served on June 15, 1998, is vacated and a Notice of Interim Trail Use or Abandonment under 49 CFR 1152.29(d) is issued authorizing interim trail use/rail banking between milepost 5.70± and milepost 17.50±, in Indiana County, PA.
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 (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.
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.

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6. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision (January 27, 1999), interim trail use may be implemented. If no agreement is reached by that time, Conrail may fully abandon the line.

7. Subject to the public use and trail use provisions above, Conrail's abandonment exemption will become effective on the service date of this decision.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary