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SERVICE DATE - MARCH 30, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-582

NAPA VALLEY WINE TRAIN, INC.—ADVERSE ABANDONMENT—
IN NAPA VALLEY, CA.

Decided: March 29, 2001

The Napa Valley Flood Control and Water Conservation District (District or petitioner) has filed a petition seeking waiver of certain regulations for a third party or “adverse” abandonment application it intends to file.¹ The District also seeks exemption from related statutory provisions. The petition will be granted to the extent discussed in this decision.²

Petitioner indicates that the adverse abandonment request will be filed in connection with its plans to construct a federally-approved flood control project on the Napa River. These plans assertedly would require the relocation of 2.28 miles of NVWT’s existing 21-mile long rail line in Napa County, CA. According to the District, the relocation would be performed at no cost to NVWT, would provide NVWT with new facilities, and would allow NVWT to continue operations with very little interruption during the relocation phase. The District maintains that NVWT has refused to consent to the relocation unless the District extensively upgrades NVWT’s facilities. Petitioner claims that this refusal delays the flood control project and threatens its federal funding. To overcome NVWT’s refusal to consent to the relocation, petitioner says it will seek Board approval of an adverse abandonment for the requisite portion of the line. The effect, as this agency and its predecessor have long held, would be to remove this agency’s primary jurisdiction over the line, thereby clearing the way for the operation of state law.³

¹ On March 27, 2001, Napa Valley Wine Train, Inc. (NVWT) filed a motion to strike the District’s waiver petition, contending that NVWT and its counsel were not served with copies of the petition. On March 28, 2001, the District replied, indicating that it served copies of its waiver petition on the parties listed in 49 CFR 1152.20(a) and on NVWT. Accordingly, the motion to strike will be denied.

² On March 21, 2001, the District, as a government entity, was granted a waiver of the filing fees for its waiver petition and adverse abandonment application.

³ See Modern Handcraft, Inc.—Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban., 7 I.C.C. 2d 216, 224-26 (1990); and Chelsea Property Owners—Aban.—The Consol. R. Corp., 8 I.C.C. 773, 778 (1992), aff’d sub nom. Conrail v. ICC, 29 F. 3d 706 (D.C. Cir. 1994).

In a petition filed March 16, 2001, the District seeks waiver from the requirements of several of the Board's abandonment regulations. Specifically, it seeks waiver from 49 CFR 1152.10-14 and 1152.24(e)(1) pertaining to system diagram maps (SDM), and from 49 CFR 1152.20 and .21, except 49 CFR 1152.20(a)(1&2) and (b)(1). The provisions the District asks be waived require the applicant to post notice of the proposed abandonment on NVWT property and to publish the notice in a local newspaper. Pursuant to the pre-filing notice requirements of 49 CFR 1152.20(a)(1) and (2) and 1152.20(b)(1), which the District did not ask the Board to waive, the District is serving copies of its pre-filing notice, the waiver petition and the application on NVWT, the shippers served by the line⁴, and other parties listed in 49 CFR 1152.20(a)(2). The District also seeks waiver of 49 CFR 1152.24 (c) and (d), which require it to send copies of its application to certain people, make it available at agency stations on the NVWT line, and provide a copy it to whomever requests it.

The District also seeks waiver from certain requirements pertaining to the content of an abandonment application, as set forth in 49 CFR 1152.22 and 49 CFR part 1152, subpart D. Petitioner seeks waiver from most of these requirements, with limited exceptions. If waivers are granted, the District plans to include in its application only: the information called for in 49 CFR 1152.22(a) (1) through (4), and (6) through (8); the limited service information and revenue data which NVWT has provided to it; the name of each station on the line; certain additional information; and a draft Federal Register notice.

In addition, the District seeks waiver of the environmental and historic preservation reporting requirements found in 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f). The District notes that the re-located line will continue to be operated by NVWT and states that therefore the adverse abandonment will have little or no environmental impacts. Petitioner further says that an Environmental Impact Statement (EIS) for the flood control project has already been completed by the U. S. Army Corps of Engineers.

Finally, the District seeks waiver of the Board's requirement in 49 CFR 1152.24(f) that a notice of consummation be submitted, as well as the 1-year abandonment authorization limit in 1152.29(e)(2).⁵

⁴ The only shipper that is identified as being served by the line is B.P.B. Marco Paper Co. See Exhibit C to the District's petition.

⁵ The District also seeks waivers and exemptions from the offer of financial assistance procedures in 49 CFR 1152.27 and 49 U.S.C. 10904, the public use procedures in 49 CFR 1152.28 and 49 U.S.C. 10905, and the trail use/rail banking procedures in 49 CFR 1152.29 and 49 U.S.C. 10907. These requests involve post-abandonment activities and will be addressed in the decision on the merits.

In support of the requested relief, the District asserts that the particular information required by the Board's regulations and for which waiver is sought is unavailable to it or is irrelevant to the issues presented in an adverse abandonment. Even if available, petitioner claims that supplying this information would serve no valid purpose here. The District also says that the bulk of NVWT's operations consists of intrastate passenger excursion service that is outside the Board's jurisdiction.

DISCUSSION AND CONCLUSIONS

In appropriate instances, such as situations involving adverse applications, the Board, like its predecessor agency the ICC, has granted waivers of inapplicable or unneeded portions of the abandonment regulations. Chelsea Property Owners–Abandonment–Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989); Grand Trunk Western Railroad Incorporated–Adverse Discontinuance of Trackage Rights Application–A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, Docket No. AB-31 (Sub-No. 30) (STB served Feb. 12, 1998); City of Rochelle, Illinois–Adverse Discontinuance–Rochelle Railroad Company, STB Docket No. AB-549 (STB served June 5, 1998); and CSX Corporation and CSX Transportation, Inc.-Adverse Abandonment Application–Canadian National Ry. Co. and Grand Trunk Western RR, Inc., STB Docket No. AB-31 (Sub-No.38) (STB served Mar. 2, 2001) (CSX–Adverse Abandonment–CN and GTW). The District correctly states that many of the cited requirements seek information it does not possess or that are irrelevant to its adverse abandonment application. Waiver of certain of the Board's regulations is thus appropriate here.

Waiver of the information required for an abandonment application by 49 CFR 1152.22 is clearly warranted. Much of this information is unavailable or irrelevant in a third party abandonment application. Moreover, because service to the area would continue essentially unchanged after abandonment, other information, such as rural and community impacts, would not be necessary.

A waiver will be granted for the SDM and the publishing and posting notice requirements of 1152.20(a)(3) and (a)(4) and 1152.24(c). Compliance with them is not feasible by a third party applicant.⁶ Furthermore, the District has agreed to comply with the pre-filing notice requirements of 49 CFR 1152.20(a)(1) and (2) and 1152.20(b)(1) and to serve copies of its pre-filing notice, the waiver petition and the application on NVWT, shippers, and other parties listed in 49 CFR 1152.20(a)(2). This assures that other potential parties with legitimate interests would be informed about the District's proposal. A waiver of 49 CFR 1152.24(d) is not justified and will not be granted.

⁶ The District also seeks exemption from the SDM requirements in 49 U.S.C. 10903(c) and the notice provisions in 49 U.S.C. 10903(a)(3). The exemption requests are unnecessary because the statute imposes these requirements only on carriers.

The abandonment consummation notification requirements in 49 CFR 1152.24(f), as well as the one-year authorization limit in 1152.29(e)(2) are not appropriate because they presuppose control over consummation once the Board's decision is issued. That is not the case in a third party abandonment, because the applicant must usually invoke state law to obtain control of the property. In this case, rail operations will continue in any event. These requirements will be waived.

The environmental requirements of 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f) will not be waived. The District in effect argues that its proposal has no environmental impact and therefore qualifies for treatment under 49 CFR 1105.6(c). The District should make that showing in its filing, rather than seeking a waiver. See CSX-Adverse Abandonment-CN and GTW.

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

It is ordered:

1. The District's petition for waiver is granted in part and denied in part, as described above.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary