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SEC

SERVICE DATE - NOVEMBER 25, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-547X

ROARING FORK RAILROAD HOLDING AUTHORITY--ABANDONMENT EXEMPTION--
IN GARFIELD, EAGLE AND PITKIN COUNTIES, CO

Decided: November 24, 1998

By decision and notice of interim trail use or abandonment served on October 16, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Roaring Fork Railroad Holding Authority (RFRHA), of a 33.44-mile line of railroad known as the Aspen Branch, extending from milepost 360.22 near Glenwood Springs to the end of the line at milepost 393.66 near Woody Creek, in Garfield, Eagle and Pitkin Counties, CO, subject to trail use, historic preservation, environmental, and employee protective conditions. The exemption was scheduled to become effective on November 15, 1998, unless an offer of financial assistance (OFA) was filed on or before October 26, 1998.

On October 26, 1998, Morris H. Kulmer and Kern W. Schumacher (the offerors) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire line. Subsequently, by decision served October 30, 1998, the Board postponed the effective date of the exemption in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. The decision stated that, if RFRHA and the offerors cannot agree on the purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase on or before November 25, 1998, and that, if no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

On November 3, 1998, RFRHA filed a motion to extend the period of time for it to respond to any request to set terms and conditions until December 4, 1998. On November 5, 1998, RFRHA filed a motion to dismiss the OFA and an appeal of the October 30 decision. On November 19, 1998, the offerors filed a reply to RFRHA's appeal of the October 30 decision.¹ On November 10, 1998, the offerors filed a motion to compel, and a request that the Board postpone indefinitely the due date for submitting a request to set terms and conditions. On November 13, 1998, RFRHA filed a response in opposition to the offerors' motion to compel.

¹ Also, on November 19, 1998, Fritz R. Kahn, attorney for offerors, on his own behalf, filed a petition for leave to file a reply and the reply itself, to answer allegations that RFRHA made against him in its appeal. On November 23, 1998, RFRHA filed a letter indicating that it intends to oppose Mr. Kahn's petition for leave to file a reply and to file a motion to strike. RFRHA states that it will make these filings on or before November 25, 1998.

Under these circumstances, the due date for submitting a request to set terms and conditions will be postponed until the Board rules on the motion to dismiss the OFA and the appeal of the October 30 decision. At that time, or shortly thereafter, rulings can be made, as necessary, on the other pending motions. Although RFRHA opposes the postponement, it is the party seeking to have the OFA dismissed. Moreover, RFRHA is seeking its own extension of time to respond to any request to set terms and conditions.

It is ordered:

1. The November 25, 1998 due date for requests to establish terms and conditions is postponed until the Board rules on the motion to dismiss the OFA and the appeal of the October 30 decision.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary