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SERVICE DATE - LATE RELEASE FEBRUARY 13, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-444 (Sub-No. 1X)

LAMOILLE VALLEY RAILROAD COMPANY—ABANDONMENT AND  
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION—IN CALEDONIA,  
WASHINGTON, ORLEANS, LAMOILLE, AND FRANKLIN COUNTIES, VT

Decided: February 13, 2004

Lamoille Valley Railroad Company (LVRC) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuance of Service and Trackage Rights to abandon approximately 96.78 miles of rail line in Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT. The rail lines to be abandoned are: (1) between approximately milepost 0.057 (SJLC valuation station 3+00) in St. Johnsbury, VT, and approximately milepost 95.324 (SJLC valuation station 5033+10) in Swanton, VT, a distance of approximately 95.26 miles; and (2) the Hardwick and Woodbury Connecting Track (H&W) between approximately H&W valuation station 0+00 (Granite Junction) and approximately H&W valuation station 80+48 (Buffalo Road), a distance of approximately 1.52 miles, in Hardwick, VT (collectively, the line). Notice of the exemption was served and published in the Federal Register on January 16, 2004 (69 FR 2646-47). The exemption is scheduled to become effective on February 17, 2004.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding that was served on January 23, 2004. In the EA, SEA recommends that the following conditions be imposed on any decision granting abandonment authority. First, LVRC stated that its former engine house and repair shop, which is adjacent to the line's right-of-way and is in an industrial park off Stafford Avenue in Morrisville, is an active hazardous waste site. According to LVRC, the site is listed in the Vermont Active Hazardous Sites List, August 2003 edition, issued by the Department of Environmental Conservation, Vermont Agency of Natural Resources, Waste Management Division (WMD). LVRC terminated its leasehold interest in the facility by agreement with the State of Vermont in 1998. Therefore, SEA recommends that, before beginning salvage activities, LVRC consult with WMD regarding the Morrisville site to identify safety precautions that should be taken during salvage activities. Second, the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified 60 geodetic station markers on the line that may be affected by the proposed abandonment. Therefore, SEA recommends that LVRC consult with NGS and provide NGS with 90 days' notice before disturbing or destroying any geodetic station markers. Finally, because the Vermont Division for Historic Preservation has not completed its review of the proposed abandonment, SEA recommends that LVRC retain its interest in and take no steps to

alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the National Historic Preservation Act, 16, U.S.C. 470f (NHPA).

In response to the EA, SEA received four comment letters. The WMD provided background information about the conditions at the former engine house and repair shop in Morrisville. According to WMD, the site contains petroleum contaminated soil and groundwater. WMD recommends that precautions be taken during salvage activities to ensure that all contaminated soil is dealt with according to the Agency Guidelines for Petroleum Contaminated Soil and Debris, which can be found on WMD's website. Based on WMD's comments, SEA recommends that the previously recommended WMD condition remain the same.

LVRC submitted a request for modification of the environmental conditions recommended in the EA. LVRC states that it holds a leasehold interest in the line, which is owned by the State of Vermont by and through the State of Vermont Agency of Transportation (VTrans). According to LVRC, the wording of the environmental conditions in the EA would require LVRC to retain its leasehold interest in the line until satisfaction of each recommended condition, which could result in an indefinite prolongation of the landlord/tenant relationship between the State of Vermont and LVRC. LVRC requests that each environmental condition be modified to require LVRC to "condition relinquishment of its leasehold interest in the line on the State of Vermont's agreement to" fulfill each recommended condition. SEA states that LVRC's suggested modification of the environmental conditions would not be appropriate here. Although the State of Vermont is the owner of the line, LVRC filed the notice of exemption to abandon the line, and the State is not the entity before the Board. Therefore, SEA recommends that the wording of the previously recommended environmental conditions remain the same. The other two comment letters, from the Northwest Vermont Rail Trail Council and the Vermont Bicycle and Pedestrian Coalition, indicated support for use of the right-of-way as a trail.

Based on SEA's recommendations, the environmental conditions recommended by SEA in the EA will be imposed.

SEA also indicated that, following abandonment of the line, the right-of-way may be suitable for other public use. On January 26, 2004, VTrans filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. By letter filed on February 12, 2004, LVRC indicated its willingness to negotiate with VTrans for interim trail use.

Because VTrans' request complies with the requirements of 49 CFR 1152.29 and LVRC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180

days, LVRC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, 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. Upon reconsideration, the notice served and published in the Federal Register on January 16, 2004, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until August 11, 2004), and subject to the conditions that LVRC shall: (1) before beginning salvage activities, consult with WMD regarding the Morrisville site to identify any safety precautions that should be taken during salvage activities; (2) consult with NGS and provide NGS with 90 days' notice before disturbing or destroying any geodetic station markers; and (3) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the NHPA.
3. 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 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 user's continuing to meet the financial obligations for 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.
6. If an agreement for interim trail use/rail banking is reached by August 11, 2004, interim trail use may be implemented. If no agreement is reached by that time, LVRC may fully abandon the line, provided that the conditions imposed in this proceeding have been met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary