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SERVICE DATE - JANUARY 17, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-88 (Sub-No. 10X)

BESSEMER AND LAKE ERIE RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN ARMSTRONG AND BUTLER COUNTIES, PA

Decided: January 12, 2001

Bessemer and Lake Erie Railroad Company (B&LE) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances for B&LE to abandon and discontinue service over its line of railroad known as the Western Allegheny Branch, extending from Station 1400+80 East to End of Track, at Station 2460+98, in Armstrong and Butler Counties, PA, a distance of 20.1 miles (line). Notice of the exemption was served and published in the Federal Register on October 10, 2000 (65 FR 60246).

By decision served November 8, 2000, the Board imposed three environmental conditions on the abandonment exemption, held in abeyance the request from the Pennsylvania Department of Conservation and Natural Resources (DCNR) for issuance of a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for issuance of a public use condition, pending completion of the offer of financial assistance (OFA) process,<sup>1</sup> extended the time for the filing of an OFA until January 8, 2001, and postponed the effective date of the exemption until January 18, 2001.

On November 14, 2000, the National Geodetic Survey (NGS) late-filed comments with the Board's Section of Environmental Analysis (SEA) identifying 3 geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that would disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that, in addition to the conditions imposed in the Board's November 8 decision, a further condition be imposed requiring B&LE to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers. The new environmental condition will be imposed.

On January 8, 2001, Bradys Bend submitted a letter stating that it had decided not to go forward with the filing of an OFA. This terminates the OFA process and it is now appropriate to

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<sup>1</sup> A formal expression of intent to file an OFA was timely filed by Bradys Bend Corporation (Bradys Bend) to purchase a portion of the line.

address the DCNR's request for issuance of a notice of interim trail use and for issuance of a public use condition.

By letter submitted by facsimile on January 11, 2001, B&LE states that it is not willing to negotiate with the DCNR for interim trail use, but that it does not oppose imposition of a public use condition. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). DCNR has met these requirements. A 180-day public use condition will therefore be imposed. B&LE may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found appropriate for public purposes.<sup>2</sup>

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. The request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted. The abandonment of the line described above is subject to the further environmental condition that B&LE consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.<sup>3</sup> Also, B&LE shall leave intact all of the right-of-way underlying the tracks, including

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<sup>2</sup> Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

<sup>3</sup> The exemption continues to be subject to the three environmental conditions imposed in the Board's November 8 decision. Those conditions are that B&LE: (1) consult with the U.S.  
(continued...)

bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days from the effective date of the exemption (i.e., until July 17, 2001), to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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<sup>3</sup>(...continued)

Department of Agriculture, Natural Resources Conservation Service, and contact Dave Rupert, District Manager, Armstrong County Conservation District, Armsdale Administrative Building, RR#8, Box 294, Kittanning, PA 16201 [(724) 854-3425] prior to salvage operations, (2) consult with the U. S. Environmental Protection Agency-Region III prior to salvage operations, and (3) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.