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SERVICE DATE – NOVEMBER 23, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1112X

CALDWELL RAILROAD COMMISSION—ABANDONMENT EXEMPTION—IN
CALDWELL COUNTY, N.C.

Decided: November 23, 2015

Caldwell Railroad Commission (CRC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 3.91-mile rail segment extending between milepost 108.79 and milepost 112.7 in Caldwell County, N.C. (the Line). Notice of the exemption was served and published in the Federal Register on October 23, 2015 (80 Fed. Reg. 64,491). The exemption is scheduled to become effective on November 24, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on October 30, 2015, recommending that three conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the National Geodetic Survey (NGS) submitted comments indicating that two geodetic station markers may be located near the Line. OEA, accordingly, recommended that a condition be imposed requiring CRC to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

OEA also received comments from the North Carolina Department of Environment and Natural Resources (NCDENR) regarding the possible need for erosion and sedimentation control permitting and a National Pollution Discharge Elimination System (NPDES) permit. OEA states that, since these comments were received, many of the duties of NCDENR have been transferred to the North Carolina Department of Environmental Quality (NCDEQ), including the permitting referenced in the NCDENR comments. Thus, OEA recommends imposing a condition that CRC consult with NCDEQ prior to commencing any salvage activities.

In addition, OEA states that the U.S. Army Corps of Engineers (the Corps) submitted comments indicating that this abandonment could affect waters of the United States. In response, OEA recommends including a condition that CRC shall consult with the Corps and comply with its reasonable requirements prior to commencement of any salvage activities.

OEA issued its final EA on November 19, 2015, noting that no comments to the EA were received by the November 16, 2015 due date and recommending that the three previously recommended environmental conditions be imposed. Accordingly, the three conditions recommended by OEA in the EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On October 30, 2015, Caldwell County Pathways, Inc. (CCP) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with CRC for acquisition of the Line for use as a trail under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, CCP also has submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on November 9, 2015, CRC indicated its willingness to negotiate with CCP for interim trail use and its support for CCP's request.

Because CCP's request complies with the requirements of 49 C.F.R. § 1152.29 and CRC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CRC may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

CCP also has requested the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. CCP asks that CRC be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. CCP's justification for this request is that these structures have considerable value for recreational trail purposes and that the 180-day period is needed to commence negotiations with CRC.

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 Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

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. 49 C.F.R. § 1152.28(a)(2). Because CCP has satisfied these requirements, a 180-day public use condition will be imposed, requiring CRC to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor

(other than tracks, ties, and signal equipment), commencing from November 24, 2015, the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on May 22, 2016, while the trail use negotiation period will run 180 days from the service date of this decision and notice, until May 21, 2016. If a trail use agreement is reached for a portion of the right-of-way prior to May 21, 2016, CRC must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CRC is not required to deal exclusively with CCP, but may engage in negotiations with other interested persons.

As conditioned, this action will 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 notice served and published in the Federal Register on October 23, 2015, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit CCP to negotiate with CRC for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until May 21, 2016, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until May 22, 2016. The abandonment also is subject to the conditions that: (1) CRC shall consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; (2) prior to the commencement of any salvage activities, CRC shall consult with NCDEQ to determine whether any permitting is required and shall comply with that agency's reasonable permitting requirements; and (3) prior to the commencement of any salvage activities, CRC shall consult with the Corps regarding potential impacts of salvage activities on waters of the United States, including wetlands, and shall comply with the Corps' reasonable requirements.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, CRC may discontinue service and salvage track and related materials. CRC shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until May 22, 2016, to enable

any state or local government agency, or other interested person to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in the paragraph above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 21, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CRC may fully abandon the Line.

9. This decision and notice is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.