

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-397 (Sub-No. 3X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE
EXEMPTION--IN TULARE AND FRESNO COUNTIES, CA

Decided: April 11, 1997

By decision served and notice published on February 9, 1995 (60 FR 7792), Tulare Valley Railroad Company (TVR) was granted an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon 55.7 miles of rail line between: (1) milepost 51.0 near Lac Jac and milepost 67.0 near Calwa, in Fresno County, CA, a distance of 16 miles (Calwa Line); (2) milepost 49.8 near Reedley and milepost 38.5 near Cutler, in Tulare County, CA, a distance of 11.3 miles (Cutler Line); (3) milepost 19.0 near Cutler and milepost 38.0 near Exeter, in Tulare County, a distance of 19.0 miles (Exeter Line); and (4) milepost 20.6 near Wyeth and milepost 11.2 near Orange Cove, in Tulare County, a distance of 9.4 miles (Orange Cove Spur). In addition, TVR was granted exemption authority to discontinue service over 1.2 miles of line between milepost 51.0 near Lac Jac and milepost 49.8 at Manning Avenue in Reedley. The exemption was granted subject to historic, labor protective, and environmental conditions. It was scheduled to become effective on March 11, 1995.

Thereafter, on August 13, 1996, a decision and notice of interim trail use or abandonment (NITU) was served. The NITU authorized a 180-day period for American Trails Association, Inc. (ATA), an interim trail user, to negotiate an interim trail use/rail banking agreement with TVR for approximately 25 miles of rights-of-way: (1) between milepost 38.5 at or near Cutler and milepost 48+1888 at or near Dinuba Avenue in Reedley; (2) between milepost 50+3780 at or near Lac Jac and milepost 58+2025 at or near Del Rey; and (3) between milepost 58+4500 at or near American Avenue near Del Rey and milepost 67.0 at or near Calwa, in Tulare and Fresno Counties, CA.

By pleading filed February 10, 1997, ATA indicates that it has acquired the above-described rights-of-way for trail purposes, and it requests issuance of a NITU to negotiate with TVR for acquisition of an additional segment of right-of-way in Reedley, between milepost 48+1888 at or near Dinuba Avenue and milepost 49+3125 at or near Manning Avenue, a distance of approximately 1 mile in Fresno County.² ATA has submitted a statement indicating its willingness to assume financial responsibility for the right-of-way, and it has acknowledged that the use of the right-of-way as a trail is subject to future restoration of rail service.

By a reply filed March 21, 1997, TVR indicates that it has not consummated abandonment and that it is willing to negotiate and enter into an interim trail use/rail banking agreement with ATA.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute and regulations, unless otherwise indicated.

² According to ATA, the City of Reedley fully supports acquisition of this additional segment of right-of-way for trail use.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way³ and the carrier is willing to enter into negotiations. In view of TVR's willingness to negotiate for trail use, a NITU will be issued under 49 CFR 1152.29 covering the above-described portion of right-of-way. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within 180 days, TVR may fully abandon the line segment provided the conditions imposed in the February 9, 1995 decision have been met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the decision served on February 9, 1995, exempting the abandonment/discontinuance of service described above, is modified to the extent necessary to implement interim trail use/rail banking for the segment of right-of-way in Reedley, Fresno County, CA, between milepost 48+1888 at or near Dinuba Avenue and milepost 49+3125 at or near Manning Avenue, until October 14, 1997.
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, 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 October 14, 1997, interim trail use may be implemented. If no agreement is reached by that time, TVR may fully abandon the line segment, provided the conditions imposed in the decision served February 9, 1995, are met.
7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

³ See *Rail Abandonments--Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987); *Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI*, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and *Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO*, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).