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SERVICE DATE - APRIL 7, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-857X

GREAT WESTERN RAILWAY OF COLORADO, LLC—ABANDONMENT EXEMPTION—
IN WELD COUNTY, CO

Decided: April 6, 2004

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, totaling approximately 11.7 miles, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on November 10, 2003 (68 FR 63846-47).¹ The exemption was scheduled to become effective on December 10, 2003. On November 14, 2003, however, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Windsor, Severance & Eaton Railroad, LLC (WS&E) to purchase all or a portion of the Eaton Subdivision. The filing of that notice of intent had the effect of automatically staying the effective date of the exemption for 10 days, until December 20, 2003. Also, WS&E requested the Board to toll the time period for submitting its OFA for an additional 30 days. By decision served December 1, 2003, WS&E's request to toll was denied. Additional requests to toll the time period for submitting an OFA were filed and granted – the latest by decision served on February 25, 2004.

By letter filed on March 24, 2004, WS&E now seeks permission to withdraw its notice of intent to file an OFA. The request will be granted. Accordingly, the OFA process is now terminated and the prior abandonment authorization will be effective on the service date of this decision, subject to any previously imposed conditions and the additional condition imposed in this decision.

The Municipalities of Eaton, Severance, and Windsor, CO (the Municipalities), have filed a request for issuance of a notice of interim trail use (NITU) for the entire 11.7 miles of railroad under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with GWRC for acquisition of the right-of-way for use as a trail. The Municipalities submitted a statement of willingness to assume financial responsibility for the 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

¹ By decision served on November 24, 2003, the proceeding was reopened and the exemption was made subject to two environmental conditions.

against any potential liability), and for payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. GWRC advised the Board that it has not consummated the abandonment of the line and that it is willing to negotiate with the Municipalities for possible trail use.

Because the Municipalities' request complies with the requirements of 49 CFR 1152.29 and GWRC 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, GWRC 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.

This decision and notice 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 permission to withdraw the notice of intent to file an OFA is granted and the financial assistance process in this proceeding is terminated.
3. The exemption will become effective on the service date of this decision and notice, subject to any previously imposed conditions and the additional condition imposed in this decision.
4. Upon reconsideration, the notice served and published in the Federal Register on November 10, 2003, 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, for a period of 180 days commencing from the service date of this decision and notice (until October 4, 2004).
5. 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 payment of any and all taxes that may be levied or assessed against the right-of-way.
6. 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.

7. 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.

8. If an agreement for interim trail use/rail banking is reached by October 4, 2004, interim trail use may be implemented. If no agreement is reached by that time, GWRC may fully abandon the line.

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

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

Vernon A. Williams
Secretary