

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 397 (Sub-No. 7X)

TULARE VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
TULARE COUNTY, CAL.

Decided: May 7, 2010

On July 1, 2009, Tulare Valley Railroad Company (TVR), filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 5.9-mile line of railroad between milepost 71+2969.2 at or near Ducor and milepost 66.0 at or near Ultra, in Tulare County, Cal. Notice of the exemption was served and published in the Federal Register on July 21, 2009 (74 Fed. Reg. 35,904). The exemption became effective on August 20, 2009.

By decision served August 19, 2009, the Board imposed a condition on the abandonment under section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, requiring TVR to retain its interest in and take no steps to alter historic properties on the line until the effect of the abandonment on those properties was considered. In a decision served December 1, 2009, the Board denied a TVR petition for reconsideration of the prior decision on grounds that the agency had not committed material error in imposing the section 106 condition in the case.

By letter filed February 18, 2010, TVR asserts that a stalemate continues over the section 106 process between the Board and the California State Historic Preservation Officer (Cal. SHPO). According to TVR, because the Board itself failed to send a letter to the Cal. SHPO formally initiating the section 106 process in this proceeding, the Cal. SHPO declined to consider TVR's Historic Report. TVR adds that it is left with no alternative but to ask the Board for a 6-month extension, to February 20, 2011, of the date by which it must file its notice of consummation of abandonment in this case.¹

TVR is incorrect that the section 106 process in this proceeding is deadlocked. Following a conference call with the Advisory Council on Historic Preservation and the Cal. SHPO, on December 10, 2009, the Board's Section of Environmental Analysis (SEA) sent a letter to all State Historic Preservation Officers (SHPOs) nationwide, including the Cal. SHPO, and all Tribal Historic Preservation Officers (THPOs), informing them that TVR and its authorized representatives may consult directly with SHPOs and THPOs to initiate the section 106 review. Moreover, the Cal. SHPO has been in communication with TVR's legal counsel,

¹ While this extension will be granted, it appears to be unnecessary, given that both the section 106 condition and the NITU issued herein operate as bars to consummation. See 49 C.F.R. § 1152.29(e)(2).

requesting information needed to move the section 106 process forward. As such, the Cal. SHPO no longer requires a letter from the Board, but is instead awaiting the submission of additional information by TVR in order to move the section 106 process forward in this proceeding.

On March 9, 2010, American Trails Association, Inc. (ATA) filed a petition 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) (Trails Act) in order to negotiate with TVR for acquisition of the right-of-way for use as a recreational trail. ATA also 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 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 at 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. In a letter filed on March 12, 2010, TVR indicated its willingness to negotiate with ATA for interim trail use.

Because ATA's request complies with the requirements of 49 C.F.R. § 1152.29 and TVR 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, TVR may fully abandon the line, subject to prior completion of the section 106 process. See 49 C.F.R. § 1152.29(d)(1). 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. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 21, 2009, 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 effective date of this order until November 7, 2010.
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 November 7, 2010, interim trail use may be implemented. If no agreement is reached by that time, TVR may fully abandon the line, subject to prior completion of the section 106 process.

7. TVR's request for an extension of time to consummate the abandonment is granted.

8. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before February 2, 2011.

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

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