

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-167 (Sub-No. 1176X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--
IN WICOMICO COUNTY, MD

Decided: April 10, 1997

By decision served and notice published on February 19, 1997, the Board granted a petition filed by Consolidated Rail Corporation (Conrail) for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon: (1) the portion of its Mardella Industrial Track extending from milepost 40.80± to the junction with Conrail's Delmarva Secondary at milepost 42.00±, near Salisbury, MD; and (2) its Mill Street Industrial Track extending from the connection with the Mardella Industrial Track at milepost 0.00± to milepost 0.60±, near Salisbury. The total distance of the two tracks is 1.80 miles. The grant was made subject to standard labor protective conditions. The decision provided that the exemption would become effective on March 21, 1997.

On March 11, 1997, The Maryland Mass Transit Administration (MTA) filed a request for the issuance of a notice of interim trail use/rail banking (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d)(Trails Act) and 49 CFR 1152.29. Alternatively, MTA sought a 180-day public use condition so that it could negotiate with Conrail for use of the line as a recreational trail.¹ On March 19, 1997, the city of Salisbury, MD (City) also requested a NITU and a public use condition to create a bike/nature trail. MTA and the City state that the 180-day period is needed to begin negotiations with Conrail. By letters filed March 18 and 28, 1997, Conrail indicated its willingness to negotiate with MTA and the City for interim trail use.

As indicated, this exemption became effective on March 21, 1997. However, Conrail's willingness to negotiate with MTA and the City for interim trail use is evidence that the railroad has not consummated the abandonment of the right-of-way. So long as the abandonment has not been consummated, the Board retains jurisdiction to issue a NITU. *See Rail Abandonments--Supplemental Trails Act Procedures*, 4 I.C.C.2d 152,157-58 (1987).

MTA and the City have submitted statements of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and they have acknowledged that use of the right-of-way for trail purposes is subject to future reactivation for rail service. In light of this and Conrail's willingness to enter into negotiations, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, our further approval is unnecessary. If no agreement is reached within 180 days, Conrail may fully abandon the line. *See* 49 CFR 1152.29(d)(1).

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, *Rail Abandonments - Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*). Under section 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.

¹ The request was contingent upon the Board's disposition of a petition filed March 6, 1997, by MTA asking the Board to reopen the proceeding and to stay its prior decision. By decision served March 24, 1997, the Board denied the petition to reopen, which action rendered moot the stay request.

MTA's and the City's submissions meet the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period requested. Accordingly, the requested 180-day public use condition will be imposed.

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. All interested parties are encouraged promptly to pursue negotiations, as the 180-day period is statutory and cannot be extended.

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 execution of a trail use agreement. *See Trails*, 2 I.C.C.2d at 609.

As conditioned, 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 decision served and notice published in the *Federal Register* on February 19, 1997, 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, and is subject to the condition that Conrail keep intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not tracks, ties and signal equipment) for a period of 180 days after the March 21, 1997 effective date of the exemption to permit MTA, the City, any other State or local government agency, or other interested persons, to negotiate for acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment.
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 trail use be vacated on a specific date.
6. If an agreement for interim trail use/rail banking is reached by September 17, 1997, interim trail use may be implemented. If no agreement is reached by that time, Conrail may fully abandon the line.

7. This decision is effective on the service date.

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

Vernon A. Williams
Secretary