

28572  
DO

SERVICE DATE - NOVEMBER 20, 1997

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Docket No. AB-398 (Sub-No. 3X)

SAN JOAQUIN VALLEY RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN FRESNO COUNTY, CA

Decided: November 17, 1997

On October 23, 1995, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the city of Clovis, CA (Clovis), to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), with San Joaquin Valley Railroad Company (SJVR) for substantially the entire 4.5-mile line segment of the Clovis Branch between milepost 214.5 at Tarpey and milepost 219.0 at Glorietta Station, in Fresno County, CA.<sup>2</sup> The 180-day period expired on November 24, 1995, but was extended through November 14, 1997, by decisions served December 12, 1995, June 7, 1996, February 6, 1997, and June 12, 1997.

On November 3, 1997, Clovis filed a motion to extend the NITU negotiating period through January 31, 1998. As noted in the June 12, 1997 decision, the line segment in this proceeding is part of complex negotiations involving a trail use/rail banking agreement covering the entire rail corridor slated for abandonment in the Fresno-Clovis Metropolitan Area. Because several other properties and jurisdictions are involved, Clovis explains that there have been additional delays. Nonetheless, it submits that the parties have made substantial progress in negotiating an agreement and anticipate closing on a rail banking contract by December 23, 1997. To allow time for possible

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<sup>1</sup> 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.

<sup>2</sup> Clovis' request covered the entire right-of-way, except the segment between Fifth Street, at or near milepost 217.3, and Third Street, at or near milepost 217.5. Then, in a letter dated May 28, 1996, Southern Pacific Transportation Company (SP), the owner of the right-of-way, expanded the excluded segment to encompass the mileage between milepost 217.2 and milepost 217.7.

last minute delays, however, Clovis requests that the negotiating period be extended through January 31, 1998. According to Clovis, both SJVR and SP consent to the extension request.<sup>3</sup>

Where, as here, the carrier is willing to continue trail use negotiations, the Board's jurisdiction is not terminated and the negotiating period may be extended.<sup>4</sup> Under the circumstances, a further extension of the NITU negotiation period is warranted and will promote the establishment of trails and rail banking consistent with the Trails Act.

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

It is ordered:

1. The NITU negotiating period is extended through January 31, 1998.
2. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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<sup>3</sup> By letter filed November 12, 1997, SP agrees with the extension request.

<sup>4</sup> See Missouri Pacific Railroad Company—Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company— Abandonment in Smith and Cherokee Counties, TX, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).

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