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SERVICE DATE - LATE RELEASE NOVEMBER 6, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-227 (Sub-No. 10X)

WHEELING & LAKE ERIE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN STARK COUNTY, OH

Decided: November 6, 1998

By decision and notice of interim trail use or abandonment (NITU) served on November 7, 1997, a 180-day period was authorized for the Stark County Park District (Stark County) to negotiate an interim trail use/rail banking agreement with Wheeling & Lake Erie Railway Company (W&LE) for W&LE's 5.65-mile line of railroad known as the Massillon Branch, extending from milepost 22.05 at Run Junction, near Navarre, OH, to the end of the track at milepost 16.40, near Massillon, OH, in Stark County, OH.¹ The negotiation period under the NITU expired on May 21, 1998.

On November 4, 1998, the City of Massillon (the City), a new negotiating party, filed a request for a NITU for the entire line. The City submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way as a trail is subject to future reconstruction and reactivation of rail service as required under 49 CFR 1152.29. By letter dated November 5, 1998, W&LE states that it has not consummated the abandonment and that it is willing to negotiate with the City for trail use.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way² and the carrier is willing to enter into negotiations. Inasmuch as W&LE has not consummated the abandonment³ and is willing to negotiate with the City for trail use over the right-of-way, a NITU will be issued, with the trail use negotiation period running for 180 days from the service date of this decision. If no agreement is reached within that time period, W&LE may

¹ Notice of the exemption was served and published in the Federal Register on August 29, 1997 (62 FR 45917).

² See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

³ The 1-year time period for consummation of the abandonment would have expired on November 9, 1998. Because of the issuance of this NITU, a legal or regulatory barrier to consummation exists, so the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. 49 CFR 1152.29(e)(2).

fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision 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 decision served November 7, 1997, exempting the abandonment by W&LE 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 from the date of service of this decision.
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, or 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 the 180th day after service of this decision, interim trail use may be implemented. If no agreement is reached by that time, W&LE may fully abandon the line.
7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary