

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1052X

ALMANOR RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN PLUMAS
AND LASSEN COUNTIES, CA

Decided: March 10, 2010

Almanor Railroad Company (AL or the railroad) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 12.3-mile line of railroad between milepost 0.0, in Chester, and milepost 12.3, near Clear Creek, in Plumas and Lassen Counties, CA. Notice of the exemption was served and published in the Federal Register on February 9, 2010 (75 FR 6432-33). The exemption is scheduled to become effective on March 11, 2010.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 12, 2010. In the EA, SEA states that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring AL to consult with NGS and notify NGS at least 90 days prior to beginning any salvage activities that could disturb or destroy any geodetic station markers.

SEA also states in the EA that the U.S. Fish and Wildlife Service (USFWS) responded to the railroad's environmental report in correspondence dated December 8, 2009, by providing a threatened and endangered species list to the railroad and requested that the railroad identify any potential effects that the proposed abandonment could have on the Federally listed species. In its environmental report, the railroad indicated that the proposed abandonment would not harm any of the listed species. However, because the railroad's conclusion was not substantiated, SEA was unable to determine from the environmental report whether any Federally listed threatened or endangered species exist in the area of the proposed abandonment. The EA states that, due to the temporary nature of the proposed salvage activities, potential impacts to any such species could be appropriately mitigated through consultation with the USFWS pursuant to Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*). Therefore, SEA recommends a condition requiring AL to contact USFWS Endangered Species Program, Sacramento, CA, prior to beginning salvage activities to discuss potential impacts to any Federally listed endangered or threatened species (as identified by the USFWS in December 8, 2009 correspondence with the railroad), and that AL report the results of this consultation to SEA in writing. Should any potential impacts be identified, AL shall consult with SEA and USFWS to develop appropriate mitigation measures.

Finally, SEA states in the EA that AL submitted a historic report to the California Office of Historic Preservation (the State Historic Preservation Office or SHPO) as required by 49 CFR 1105.8(c). However, at the time the EA was served, the SHPO had not yet submitted comments in response to the historic report. Accordingly, in the EA, SEA recommended a condition requiring AL to retain its interest in and take no steps to alter the historic integrity of any historic properties, including sites, buildings, structures and objects within the right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, has been completed (section 106 process). SEA's recommended condition also requires that AL report back to SEA regarding any consultations with the SHPO and the public, and that AL not file its consummation notice or initiate any salvage activities related to abandonment (including removal of track and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by March 1, 2010. On February 17, 2010, SEA received a comment submitted by the SHPO, stating that no historic properties would be affected by the proposed abandonment. Pursuant to the section 106 regulations of the NHPA, and following consultation with the SHPO and the public, SEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA no longer recommends the imposition of a section 106 condition, and none will be included.¹

No other comments, other than the public use and trail use requests discussed below, were received. Accordingly, the conditions recommended by SEA in the EA, other than the historic preservation condition, will be imposed.

On February 22, 2010, the Feather River Land Trust (Feather River) filed a request for the issuance of a notice of interim trail use (NITU) for the right-of-way under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and the Board's regulations at 49 CFR 1152.29. Feather River submitted a statement of willingness to assume the responsibility for the property as required by section 1152.29. Feather River also requests issuance of a public use condition under 49 U.S.C. 10905 and 49 CFR 1152.28,² in order to negotiate with AL for acquisition of the right-of-way for use as a recreational trail. Feather River requests that AL be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that AL be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Feather River states that the corridor would make an excellent recreational trail linking four communities along one continuous trail, and that

¹ On February 23, 2010, SEA received a comment submitted by AL opposing the imposition of a section 106 condition. Due to the SHPO's comment and SEA's subsequent no adverse affects determination, AL's arguments raised in that comment are moot and need not be addressed in this decision.

² The EA indicated that the right-of-way may be suitable for other public use following abandonment.

conversion of the property to trail use is consistent with local plans and provides direct and traditionally used access from the Chester public schools to important educational lands located along the North Fork Feather River. Feather River states that the 180-day period is needed to begin negotiations with AL.

Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board can only issue a NITU if the railroad agrees to negotiate. Here, by letter dated March 9, 2010, AL states that it does not agree to negotiate a trail use agreement with Feather River. Accordingly, Feather River's trail use request will be denied.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use, including recreational use, under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). 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.

To justify a public use condition, a party must set forth: (1) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because Feather River has met these requirements, a 180-day public use condition will be imposed, commencing from the March 11, 2010 effective date of the exemption. Also, 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, including trail use. Therefore, with respect to the public use condition, AL is not required to deal exclusively with Feather River, but may engage in negotiations with other interested persons.

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 notice served and published in the Federal Register on February 9, 2010, exempting the abandonment of the line described above, is modified to require that AL keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days commencing from the March 11, 2010 effective date of the exemption (until September 7, 2010), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use, and subject to the conditions that AL shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning any salvage activities that could disturb or destroy any geodetic station markers; and (2) prior to commencement of any salvage activities, contact USFWS Endangered Species Program, Sacramento, CA, to discuss potential impacts to any Federally listed endangered or threatened species (as identified by USFWS in December 9, 2009 correspondence with AL), report the results of these consultations

in writing to SEA, and if any potential impacts are identified, consult with SEA and USFWS to develop appropriate mitigation measures.

3. Feather River's request for issuance of a notice of interim trail use is denied.
4. This decision is effective on its service date.

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