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SERVICE DATE - DECEMBER 19, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-397 (Sub-No. 1X)¹

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN KINGS AND TULARE COUNTIES, CA

STB Docket No. AB-397 (Sub-No. 4X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT--
EXEMPTION--IN TULARE COUNTY, CA

Decided: December 16, 1997

In Docket No. AB-397 (Sub-No. 1X), by decision served March 24, 1994,² the ICC granted Tulare Valley Railroad Company (TVR) an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon 29.5 miles of rail line: (1) between milepost 0.3 at Corcoran and milepost 15.1 at Tulare, and (2) between milepost 23.8 at Visalia and milepost 38.5 at Cutler, in Kings and Tulare Counties, CA.³ The exemption became effective on April 23, 1994, subject to employee protective conditions. On May 3, 1994, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided a 180-day period for TVR to negotiate an agreement with American Trails Association (ATA). On April 20, 1995, ATA notified the Board that an interim trail use/rail banking agreement had been timely reached.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience only.

² Notice of the exemption was published in the Federal Register on March 24, 1994 (59 FR 14000).

³ The March 24, 1994 decision also imposed several environmental conditions requiring: (1) TVR to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) TVR to consult with the California Environmental Protection Agency, State Water Resources Control Board Office, prior to engaging in any salvage activities; and (3) that no salvage activities shall begin until the requirements under section 7 of the Endangered Species Act, 16 U.S.C. 1536, have been completed. By decision served July 29, 1994, the section 7 (Endangered Species Act) condition, imposed in the decision served March 24, 1994, was modified to read: In order to limit the effect on any Federally listed threatened and endangered species, the Tulare Valley Railroad Company must confine its salvage activities to the railroad's right-of-way.

On April 22, 1997, ATA filed a request for partial vacation of the NITU served May 3, 1994. By decision served May 14, 1997, the NITU was modified and vacated with respect to the line segment between milepost 0.3 at Corcoran and milepost 12+5055 at the west side of Inyo Avenue in Tulare, in Kings and Tulare Counties, CA, a distance of 12 miles.

In STB Docket No. AB-397 (Sub-No. 4X), TVR filed a notice of exemption under 49 CFR 1152, Subpart F--Exempt Abandonments to abandon approximately 5 miles of railroad from milepost 15.1 at Tulare, to milepost 20+1191.3 at Loma, in Tulare County, CA. A notice of the exemption was served and published in the Federal Register on August 20, 1996 (61 FR 43117). On September 17, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for the City of Tulare (City), to negotiate an interim trail use/rail banking agreement with TVR for the right-of-way involved in this proceeding. The negotiation period expired on March 18, 1997.⁴ On March 26, 1997, a NITU was served, which authorized a 180-day period for ATA, as a new negotiation party, to negotiate an interim trail use/rail banking agreement with TVR for the 5-mile line of railroad.

On November 10, 1997, the City filed a request for substitution of interim trail operator in lieu of ATA⁵ pursuant to 49 CFR 1152.29(f), for the approximately 5-mile portion of the right-of-way between milepost 12+5055 on the west side of Inyo Avenue and milepost 17+3025 on the north side of Prosperity Avenue in Tulare. The City has filed a statement of willingness to assume financial responsibility which conforms to the requirements for implementing 49 U.S.C. 1247(d) as set forth in 49 CFR 1152.29. The parties state that they have entered into an agreement providing for the transfer of interim trail manager responsibility on September 9, 1997. By facsimile dated December 11, 1997, TVR states that ATA intends to terminate its trail use of the specified segment of the right-of-way and intends that the City will substitute as the new interim trail user.

The City has made the required showing under 49 CFR 1152.29(f) for the substitution of interim trail user. Accordingly, the City's request will be granted.

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

⁴ The September 17, 1996 decision imposed a 180-day public use condition, that expired on March 18, 1997. The decision also imposed an endangered species condition under section 7 of the Endangered Species Act, 16 U.S.C. 1536. That condition was removed by decision served October 18, 1996.

⁵ The NITU issued on March 26, 1997, in STB Docket No. AB-397 (Sub-No. 4X) evidently led to a trail use agreement between TVR and ATA that covered at least the segment between milepost 15.1 and milepost 17+3025 because the City's filing indicates that this segment has been in ATA's possession since April 1997.

Docket No. AB-397 (Sub-No. 1X, et al.

It is ordered:

1. This proceeding is reopened.
2. As to the segment between milepost 12+5055 and milepost 17+3025, the decisions and notices of interim trail use served May 3, 1994, and March 26, 1997, are vacated and the City is authorized to replace ATA as the new trail user over the involved right-of-way, effective on the service date of this decision.
3. The exemptions for the abandonment of the lines described above are subject to the environmental conditions imposed in the March 24, 1994, September 17, 1996, and July 29, 1994 decisions.
4. The new trail user is required 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.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligation for the right-of-way.
6. If the new trail 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.
7. 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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