

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE AND ABANDONMENT

STB Docket No. AB-854X

ALLEGHENY AND EASTERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN  
ELK AND CAMERON COUNTIES, PA

Decided: December 29, 2006

Allegheny & Eastern Railroad, Inc. (A&E),<sup>1</sup> filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an 18.9-mile line of railroad extending between milepost 131, near St. Marys, in Elk County, and milepost 149.9, southeast of Emporium, in Cameron County, PA. Notice of the exemption was served and published in the Federal Register on September 30, 2003 (68 FR 56377-78). By decision and notice of interim trail use or abandonment (NITU) served October 30, 2003 (October 30 decision), the proceeding was reopened and the County of Cameron (Cameron County), in cooperation with the County of Elk (Elk County), was authorized to negotiate an interim trail use/rail banking agreement with A&E for the right-of-way in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. 1247(d).<sup>2</sup> The negotiating period under the NITU was extended several times, with the latest extension expiring on January 13, 2007.

On November 6, 2006, Elk County filed a request for the substitution of the West Creek Recreational Trail Association, Inc. (WCRTA), as the party that will be responsible for representing interim trail use/rail banking managerial matters before the Board.<sup>3</sup> On

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<sup>1</sup> As of January 1, 2004, A&E was authorized to be merged into Buffalo & Pittsburgh Railroad, Inc. (BPRR), with BPRR as the surviving entity.

<sup>2</sup> The October 30 decision also made the exemption subject to a public use condition, a historic preservation condition, and two environmental conditions. The public use condition expired on April 28, 2004, and may not be extended. The section 106 historic preservation condition was removed by decision served on December 1, 2003. The two environmental conditions remain in effect.

<sup>3</sup> By letter filed on November 15, 2006, A&E stated that it is agreeable to Elk County's request to substitute WCRTA as the new trail user, provided that Elk County and WCRTA comply with the requirements at 49 CFR 1152.29(f).

December 19, 2006, WCRTA submitted: (1) an assignment to WCRTA of Cameron County's and Elk County's rights and obligations as interim trail user; and (2) a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29. WCRTA also acknowledged that the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Although the parties did not submit a copy of the extant NITU, their submission substantially meets the requirements of 49 CFR 1152.29(f). WCRTA requests that the authorization be made effective on January 1, 2007. Accordingly, the request will be granted.

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. The NITU served on October 30, 2003, is vacated.
3. A replacement NITU applicable to WCRTA as interim trail user is issued, effective on January 1, 2007, as requested, subject to the environmental conditions that remain in effect.
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 obligations 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 and notice is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary