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SERVICE DATE – NOVEMBER 27, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-600 (Sub-No. 1X)

YAKIMA INTERURBAN LINES ASSOCIATION—ABANDONMENT EXEMPTION—IN
YAKIMA COUNTY, WA

Decided: November 26, 2007

Yakima Interurban Lines Association (YILA) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad known as the Naches Branch (Line), from milepost 2.97 (Fruitvale, near Yakima) to milepost 14.26 (near Naches), a distance of approximately 11.29 miles, in Yakima County, WA. YILA also sought exemption from the offer of financial assistance procedures at 49 U.S.C. 10904. Additionally, a request on behalf of Yakima County (County) for issuance of a notice of interim trail use (NITU) was filed with the notice, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). On January 19, 2006, notice of the exemption was served and published in the Federal Register (71 FR 3153-54).

By decision served on February 17, 2006, the Board imposed seven environmental conditions recommended by the Board's Section of Environmental Analysis, including a historic preservation condition requiring that YILA retain its interest in and take no further steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. On April 5, 2006, a NITU was issued authorizing the County to negotiate an interim trail use/rail banking agreement with YILA until October 2, 2006.¹ On March 19, 2007, YILA and the County signed an agreement for interim trail use and for the acquisition of the Line pursuant to the Trails Act. In a June 28, 2007 letter, YILA and the County informed the Board that the Line had been transferred from YILA to the County (except for certain parcels covered by the section 106 condition) under the Trails Act, and that all lien holders, except Washington State Department of Transportation, which has waived its rights, have been satisfied. By decision served on July 6, 2007, the proceeding was reopened and the section 106 condition was removed.²

¹ That decision provided that the abandonment authorization would become effective on the April 5 service date, subject to the environmental conditions imposed in the February 17 decision. In subsequent Board decisions, the NITU was further extended until September 27, 2007.

² By letter filed on August 16, 2007, YILA and the County subsequently informed the Board that the entire line had been transferred pursuant to the Trails Act.

On July 18, 2007, the County, City of Yakima, Town of Naches, and YILA (collectively, petitioners) filed a petition for reconsideration of the July 6 decision.³ Petitioners request that the Board either correct by deletion or clarify footnote 2 of the decision (the subject footnote) as contrary to Board regulations, industry practice, and the Trails Act. Kershaw Sunnyside Ranches, Inc. (Kershaw), filed a response in opposition.

The subject footnote reads as follows:

YILA and the County state that, because of the transfer of [the] Naches Branch, the NITU automatically extends indefinitely. This is not correct. The purpose of the NITU is to prevent the carrier seeking abandonment—here, YILA—from consummating abandonment while the railroad negotiates an agreement with the rail banking proponent. When the agreement is signed, the NITU is typically no longer necessary because the agreement usually precludes the railroad from consummating the abandonment.

Pursuant to 49 CFR 1115.3, a petition for reconsideration of an administratively final action must state in detail the respects in which the proceeding involves material error, new evidence, or changed circumstances. In the case at hand, petitioners essentially argue that the Board committed material error in the language contained in the subject footnote.

Petitioners characterize the subject footnote as incorrect and confusing. They are concerned that its language suggesting that a NITU is no longer necessary once a Trails Act agreement is reached raises questions about the agency's continuing jurisdiction over the property for the duration of the interim trail use. If the Board does not correct the footnote by deleting it, petitioners seek reassurance through clarification that, post-interim trail use agreement, they will not be required to submit any more requests for extensions of the NITU negotiating period or to take any other further action in order to comply with 16 U.S.C. 1247(d).

To avoid possible confusion, the following clarification will be provided. The Board retains jurisdiction over a rail line as long as the railroad has not consummated, i.e., exercised, its abandonment authority.⁴ The issuance by the agency of a NITU is evidence that the railroad has

³ Although petitioners style their request as a “motion to correct,” Board rules do not provide for such a filing. See, e.g., General Railway Corporation, D/B/A Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served July 13, 2007). The request will, however, be treated as a petition for reconsideration of the July 6 decision.

⁴ See Hayfield Northern R.R. v. Chicago & N.W. Transp. Co., 467 U.S. 622 (1984); Birt v. STB, 90 F.3d 580, 589 (D.C. Cir. 1996); Baros v. Tex. Mex. Ry. Co., 400 F.3d 228, 236 (5th Cir. 2005). The agency determines whether an abandonment has been consummated on the basis of the carrier's intent. See Fritsch v. ICC, 59 F.3d 248, 253 (D.C. Cir. 1995). That intent can be demonstrated in a variety of ways, e.g., discontinuing operations, salvaging the track, or

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agreed to negotiate for interim trail use and has also agreed not to exercise its abandonment authority during the negotiating period or during the period in which trail use/rail banking is in effect. If a Trails Act agreement is reached, there is no need to continue to extend the NITU negotiating period. A signed agreement authorized by the NITU demonstrates the railroad's commitment to use the right-of-way for rail banking and interim trail use and not to consummate abandonment for the duration of the interim trail use. Moreover, the Trails Act bars the Board from permitting abandonment inconsistent with or disruptive of the rail banking or interim trail use authorized by the agreement reached under the NITU.⁵

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

It is ordered:

1. The petition for reconsideration is granted to the extent it sought clarification of footnote 2 of the July 6, 2007 decision and footnote 2 is clarified as set forth in this decision.
2. This decision will be effective on its date of service.

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

Vernon A. Williams
Secretary

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canceling tariffs. For abandonment proposals filed on or after January 23, 1997, a railroad that wishes to exercise its abandonment authority is to file a notice of consummation with the Board. See 49 CFR 1152.29(e)(2); Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996), 2 S.T.B. 311 (1997). Barring legal or regulatory barriers to consummation, such a notice is conclusive on the point of consummation. 49 CFR 1152.29(e)(2).

⁵ 16 U.S.C. 1247(d).