

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-857 (Sub-No. 1X)

GREAT WESTERN RAILWAY OF COLORADO, LLC—ABANDONMENT EXEMPTION—
IN WELD COUNTY, CO

Decided: July 28, 2008

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Welty Branch, a 6.2-mile line of railroad, extending between milepost 0.0, at Johnstown, and milepost 6.2, near Welty, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on May 6, 2008 (73 FR 25095). The exemption became effective on June 5, 2008.¹

On June 6, 2008, as supplemented on July 10, 2008, the Town of Johnstown, CO (the Town), late filed a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and for a public use condition under 49 U.S.C. 10905,² to negotiate with GWRC for acquisition of the ROW for various public purposes including use as a recreational trail. The Town has submitted a statement of willingness to assume full financial responsibility for the management of, to indemnify the railroad against any potential liability, and for the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By a pleading filed on July 21, 2008, GWRC states that it is willing to negotiate with the Town for interim trail use.

¹ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on May 9, 2008, recommending that a historic preservation condition be imposed on the proposed abandonment. By decision served on June 4, 2008, the exemption was made subject to that condition.

² In the EA, SEA indicated that the right-of-way (ROW) may be suitable for other public use following abandonment. The May 6, 2008 notice provided that trail use/rail banking requests were to be filed by May 16, 2008, and that requests for public use conditions were to be filed by May 27, 2008. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the Town's late-filed request will prejudice and party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Because the Town's request complies with the requirements of 49 CFR 1152.29 and GWRC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, GWRC may fully abandon the line, provided that the historic preservation condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As noted above, the Town also has requested a 180-day public use condition. The Town requests that GWRC be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms for a 180-day period from the effective date of the abandonment. The Town states that the time period is needed to assemble and review title information and commence negotiations with GWRC.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public 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: (i) 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 the Town has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 5, 2008 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the ROW, GWRC must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. 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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, GWRC is not required to deal exclusively with the Town, but may engage in negotiation 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. The late-filed request for a NITU under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 is accepted.

3. Upon reconsideration, the notice served and published in the Federal Register on May 6, 2008, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations for a period of 180 days commencing from the June 5, 2008 effective date of the exemption (until December 2, 2008).

4. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, GWRC may discontinue service and salvage track and related materials, to the extent the salvage activities are not prohibited by the previously imposed historic preservation condition (see supra note 1). GWRC shall keep intact the ROW, including bridges, trestles, culverts and tunnels, until December 2, 2008, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before December 2, 2008, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

5. 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, 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 ROW.

6. 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 ROW.

7. 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.

8. If an agreement for interim trail use/rail banking is reached by December 2, 2008, interim trail use may be implemented. If no agreement is reached by that time, GWRC may fully abandon the line, provided the historic preservation condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1).

9. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary