

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-468 (Sub-No. 2X)

PADUCAH & LOUISVILLE RAILWAY, INC.--ABANDONMENT
EXEMPTION--IN WHITE PLAINS AND ST. CHARLES, KY

Decided: August 21, 1997

Paducah & Louisville Railway, Inc. (P&L) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 8.50 miles of its line of railroad between milepost J-146.0 at White Plains and milepost J-154.5 near St. Charles, in Hopkins County, KY. The notice was served and published in Federal Register on July 25, 1997 (62 FR 40137-38). The exemption is scheduled to become effective on August 26, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served August 1, 1997. In the EA, SEA indicates that the Mayor of White Plains (Mayor) has expressed a particular concern about the drainage system for the City of White Plains. According to the Mayor, without access to the drainage system, which is located along the right-of-way (particularly the section between White Plains and Pond River), and without proper maintenance, the town of White Plains could be flooded after the line is abandoned. These concerns would be alleviated if an easement was provided that allowed White Plains to use the existing right-of-way for access to the drainage system. Granting such an easement at the time of sale of the right-of-way would be appropriate. On the basis of the Mayor's concern (which was set out in a letter from the Department for Environmental Protection included with P&L's environmental report), SEA recommends that, if abandonment is granted, and concurrent with any sale of the right-of-way, the following condition be imposed: P&L shall consult with appropriate officials of the City of White Plains regarding access to the City's drainage system which is located along the P&L right-of-way. The purpose of this consultation is for P&L to assist White Plains in establishing access to and maintenance of the City's drainage system.

On August 16, 1997, Kentucky Rails to Trail Council (Commenter) late-filed a request for issuance of a notice of interim trail use/rail banking (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), and a public use condition, so that it could negotiate with P&L for use of the line as a trail.¹

Commenter requests that P&L be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, along the right-of-way, except for public use on reasonable terms, and that P&L be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Commenter states that the rail corridor provides greenspace which ties two western Kentucky communities together and provides an environment in which prairie grasses and other uncommon grasses may grow. Commenter further states that the corridor may also provide habitat for the federally listed endangered Indiana Bat. However, just west of St. Charles along the railroad right-of-way the Copper Bellied Water Snake has been found. Commenter states that it needs the full 180-day period allowed because it has not had time to confirm the existence of these plants and animals, review title information or complete a trail plan. It submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR

¹ The July 25 notice also provided that requests for trail use/rail banking had to be filed by August 4, 1997. The notice stated, however, that the Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile filed

August 21, 1997, P&L indicated its willingness to negotiate with Commenter for interim trail use. In light of P&L's willingness to negotiate, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within the 180-day period, P&L may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails Rail Abandonment-Use of Rights-of-Way, 2 I.C.C.2d 591, 609. 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). Commenter has satisfied these requirements and therefore, a 180-day public use condition will be imposed to control disposal of rail properties being abandoned. P&L will be permitted to remove the tracks, ties, and signal equipment on the right-of-way, but will be required to leave bridges, culverts, and tunnels intact during that period. 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 appropriate for public purposes.

When the need for interim trail use/rail banking and a public use condition is shown, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on July 25, 1997, exempting the abandonment of the line described above is modified to the extent necessary to implement trail use/rail banking as set forth below and to the condition that P&L shall: (a) concurrent with any sale of the right-of-way, consult with the appropriate officials of the City of White Plains regarding access to the City's drainage system which is located along the P&L right-of-way and (b) keep intact the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not tracks, ties and signal equipment), for a period of 180 days (until February 22, 1998), to enable any State or local government agency, or other interested persons, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment.
3. 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 right-of-way.
4. 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 right-of-way.
5. 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.
6. If any agreement for interim trail use/rail banking is reached by February 22, 1998, interim trail use may be implemented. If no agreement is reached by that time, P&L may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary