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SERVICE DATE - MAY 23, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-398 (Sub-No. 6X)

SAN JOAQUIN VALLEY RAILROAD COMPANY--  
ABANDONMENT EXEMPTION--IN KERN COUNTY, CA

Decided: May 22, 2000

San Joaquin Valley Railroad Company (SJVR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately half mile segment of railroad on the Oil City Subdivision, between milepost 311.9 and milepost 312.5 at or near Maltha, in Kern County, CA (rail line). Notice of the exemption was served and published in the Federal Register on April 24, 2000 (65 FR 21800-1). The exemption is scheduled to become effective on May 24, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 28, 2000. In the EA, SEA stated that the U.S. Army Corps of Engineers (Corps), the U.S. Fish and Wildlife Service (FWS) and the U.S. Environmental Protection Agency, Region 9, California (US EPA) have not completed their evaluation of the potential impact of the proposed abandonment. Therefore, SEA recommended that conditions be imposed on any abandonment authorization requiring SJVR to: (1) consult with the Corps prior to salvage of the right-of-way to determine if the proposed project is consistent with applicable Federal, State and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act; (2) not begin salvage or disposal of the entire right-of-way, until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531, and (3) refrain from conducting any salvage activity of the right-of-way until US EPA has completed its review of the proposed abandonment. Comments to the EA were due by May 14, 2000.

On May 10, 2000, SJVR filed comments to the EA. SJVR argues that the three conditions requiring SJVR, prior to any salvage activity of the rail line, to consult with the Corps, the FWS, and the US EPA are not justified and requests that the conditions not be imposed.

SEA believes that the three conditions are necessary to ensure that potential environmental impacts associated with the abandonment and salvage of the rail line are appropriately mitigated. SEA notes that it was first alerted to the potential for environmental concerns regarding the abandonment when it was contacted by Mr. Guenther Moskat (Moskat) of the State of California, Environmental Protection Agency, Department of Toxic Substances Control (CA EPA-DTSC).<sup>1</sup>

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<sup>1</sup> SEA was contacted by Moskat after he received a copy of SJVR's notice of the proposed  
(continued...)

Because of the potential for environmental concerns associated with this abandonment, particularly if toxic substances are involved, SEA believes that it is appropriate for SJVR to consult with the Corps, the FWS, and the US EPA prior to any salvage activities.<sup>2</sup>

As a result of further discussion between SEA and CA EPA-DTSC, SEA states that the CA EPA-DTSC has not completed its review of the proposed abandonment and the possible impacts from salvage activity. SEA further states that CA EPA-DTSC is concerned about the possible presence of arsenic in the right-of-way materials and the disposal of these materials. Therefore, SEA recommends imposing an additional condition. That condition would require that the SJVR right-of-way remain in place and that no salvage activity occur until SJVR consults with the CA EPA-DTSC to develop appropriate salvage and disposal measures that may be necessary to comply with applicable state toxic substance control regulations. The condition would also require SJVR to provide SEA with the results, in writing, of its consultation with the CA EPA-DTSC, and set forth in the report any necessary salvage and disposal measures.<sup>3</sup>

The three initial conditions recommended in the EA, as noted above, and a new additional condition will be imposed.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that SJVR: (1) consult with the Corps prior to salvage of the right-of-way to determine if the proposed project is consistent with applicable Federal, State and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act; (2) refrain from salvaging or disposing of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (3) refrain from salvaging the right-of-way

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<sup>1</sup>(...continued)  
abandonment as required by the Board's environmental rules at 49 CFR 1105.7. In addition, Moskat later received a copy of the EA.

<sup>2</sup> The contacts for the Corps, the FWS, and the EPA are as follows: (1) Mr. Mark Charlton, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814, (916) 557-7490; (2) Mr. Peter Cross, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room 2605, Sacramento, CA 95825, (916) 414-6700; and (3) Mr. Terry Brubaker, U.S. EPA, Region 9, 75 Hawthorne Street, SFD-6, San Francisco, CA 94105, (415) 744-2293.

<sup>3</sup> The contact for the CA EPA-DTSC Regional Office is Mr. Tom Kovak, (559) 297-3939.

until the US EPA has completed its review of the proposed abandonment; and (4) keep the right-of-way in place and refrain from any salvage activity until SJVR consults with the CA EPA-DTSC to develop appropriate salvage and disposal measures that may be necessary to comply with applicable state toxic substance control regulations, and provide SEA with the results, in writing, of its consultation with the CA EPA-DTSC, and set forth in the report any necessary salvage and disposal measures.

3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary