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SERVICE DATE – LATE RELEASE FEBRUARY 13, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1076X

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CLARK, PIKE AND MONTGOMERY COUNTIES, ARK.

Docket No. AB 1076 (Sub-No. 1X)

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN PIKE
AND CLARK COUNTIES, ARK.

Decided: February 13, 2013

This decision extends the time to exercise the abandonment authority and file a notice of consummation in Docket No. AB 1076 (Sub-No. 1X).

In Docket No. 1076X (notice proceeding), Caddo Valley Railroad Company (CVRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the portion of the Norman Branch Line between milepost 447, near Antoine, and milepost 479.2, at the end of the line near Birds Mill, a distance of 32.2 miles, in Clark, Pike, and Montgomery Counties, Ark. (the notice segment). Notice of the exemption was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,125) (November 2011 notice). The exemption became effective on March 5, 2012.¹

Concurrently with filing its verified notice of exemption in the notice proceeding, CVRR also filed in Docket No. AB 1076 (Sub-No. 1X) (petition proceeding), a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon the adjoining segment of the Norman Branch Line between milepost 429.45, near Gurdon, and milepost 447, near Antoine, a distance of 17.55 miles, in Pike and Clark Counties, Ark. (the petition segment). In a decision served on February 14, 2012 (February 2012 decision), the Board granted the exemption as to the petition segment. The February 2012 decision provides that, if consummation has not been effected by CVRR's filing of a notice of consummation by

¹ The November 2011 notice stated that the exemption would become effective December 16, 2011, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed. In a decision served on December 13, 2011, the Board extended the deadline for filing an OFA in the notice proceeding until February 24, 2012, so that the deadline would coincide with the OFA deadline in Docket No. AB 1076 (Sub-No. 1X), described below. The effective date of the exemption was postponed until March 5, 2012, 10 days after the due date for filing an OFA.

February 14, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. 49 C.F.R. § 1152.29(e)(2).

By decision served on February 23, 2012, the notice proceeding was reopened and the exemption was made subject to two environmental conditions, including a condition that CVRR consult with the Board's Office of Environmental Analysis and the U.S. Fish and Wildlife Service, Arkansas Ecological Services Office, to develop appropriate mitigation measures, if necessary, and refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the consultation process under Section 7 of the Endangered Species Act, 16 U.S.C. § 1535, is complete and the Board has removed this condition. This condition remains a barrier to consummating abandonment of the notice segment.

On February 8, 2013, the West Central Arkansas Planning and Development District (WCAPDD) late filed a request² for the issuance of a NITU for both the notice and petition segments to negotiate with CVRR for acquisition of the right of way (ROW) for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. WCAPDD included in its filing a letter from CVRR, dated February 6, 2013, indicating that CVRR has not yet consummated the abandonments of either the petition or notice segments and is willing to negotiate for interim trail use/rail banking with WCAPDD.³

On February 12, 2013, Betty Pennington, a landowner along the ROW, filed a comment in opposition to WCAPDD's request. Pennington seeks to assert her reversionary rights to the land underlying the ROW and opposes the late-filed NITU request. Pennington also asserts that WCAPDD misrepresented itself as a "state entity" and is thus not entitled to a fee waiver under 49 C.F.R. § 1002.2(e)(1).

To allow adequate time for the Board to consider WCAPDD's NITU request and Pennington's comments in opposition, the deadline for CVRR to file its notice of consummation in the petition proceeding will be extended from February 14, 2013, to February 28, 2013.

² The November 2011 notice provided that requests for trail use/rail banking were to be filed by November 28, 2011. Requests for trail use/rail banking in the petition proceeding were due December 6, 2011.

³ If a legal or regulatory barrier to consummation exists at the end of time period for consummation, the railroad is required to file its notice of consummation within 60 days after removal or expiration of that legal or regulatory barrier. 49 C.F.R. § 1152.29(e)(2). Because a NITU negotiating period is such a barrier, if a NITU were to be issued and trail use negotiations ultimately were unsuccessful, the deadline for CVRR to file its notice of consummation in the petition proceeding would be 60 days after expiration of the NITU, and in the notice proceeding, 60 days after expiration of the NITU or removal of the Section 7 condition, whichever is later.

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

It is ordered:

1. The deadline for CVRR to exercise its abandonment authority and file its notice of consummation in Docket No. AB 1076 (Sub-No. 1X) is extended to February 28, 2013.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.