STB NO. AB-433 (SUB-NO. 2X)[1]

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--
ABANDONMENT AND DISCONTINUANCE EXEMPTION--
IN WASHINGTON AND ADAMS COUNTIES, ID

Decided March 20, 1998

The Board denies the Coalition of Concerned Citizens' petition to reopen these proceedings and its' request for oral hearing.

BY THE BOARD:

On July 23, 1997, the Coalition of Concerned Citizens (CCC) filed a petition to reopen these proceedings. Friends of the Weiser River Trail, Inc. (Friends) filed a reply on July 25, 1997.[2] Various interests submitted comments and letters.[3] We will deny the petition to reopen.

PRELIMINARY MATTER

CCC and Friends argue about whether CCC has standing to participate in these proceedings. Because CCC is already a party of record and has

[1] This proceedings also embraces *Union Pacific Railroad Company–Discontinuance of Service Exemption–In Washington County, ID,* STB Docket No. AB-33 (Sub-No. 100X), and *Union Pacific Railroad Company–Acquisition Exemption–Idaho Northern & Pacific Railroad Company,* STB Finance Docket No. 33305.

[2] The parties have filed a number of pleadings which we normally would reject as in violation of our rules at 49 CFR 1104.13(c), many of which have been the subject of motions to strike. We will, however, construe our rules liberally here and accept the pleadings in the interest of deciding the merits on as complete a record as possible. Our acceptance of these pleadings will not unduly broaden the issues in any significant respect.

[3] Comments/letters were filed by Union Pacific Railroad Company (UP), Idaho Senator Dirk Kempthorne, the Washington County Board of Commissioners, the Adams County Board of Commissioners, Robert and Gerlene A. Hash, Evelyn Snider on behalf of Starkey Hot Springs Summer Resort, Douglas M. Scism, Philip and Virginia Govedare, and Duane Fairchild.

participated in these cases, the standing issue has already been resolved in its favor. Consequently, we will not discuss it further.

BACKGROUND

Docket No. AB-433 (Sub-No. 2X). On March 17, 1995, Idaho Northern & Pacific Railroad Company (IN&P) filed a petition for exemption to: (1) abandon approximately 83.1 miles of rail line formerly owned by Union Pacific Railroad Company (UP) between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, ID; and (2) discontinue trackage rights over a rail line owned and operated by UP between milepost 0.0 and milepost 1.0 in Weiser. By decision served November 1, 1995, the former Interstate Commerce Commission (ICC) granted the exemption, subject to standard labor protective conditions, environmental conditions, and a public use condition.[4]

On December 28, 1995, the ICC served a decision and notice of interim trail use or abandonment (NITU), authorizing a 180-day period for the Idaho Department of Parks and Recreation (IDPR) to negotiate an interim trail use/rail banking agreement with IN&P for the right-of-way. On May 31, 1996, IDPR requested a 180-day extension of time to negotiate under the NITU. On June 14, 1996, UP informed the Board that IN&P had reconveyed the line to it on May 14, 1996; UP, however, also agreed to the extension request. On June 17, 1996, a letter-petition was filed by Ron D. Blendu, Donna Servatius, and Dave C. Springer on behalf of CCC, requesting rejection of IDPR's extension request.[5] By decision served July 5, 1996, the proceeding was held in abeyance (including any action on the outstanding NITU extension request) to allow IN&P and UP to clarify the status and ownership of the Weiser-Rubicon line.

On July 24, 1996, CCC filed a petition for administrative review of our July 5, 1996 decision contending, among other things, that the Board lacked jurisdiction to hold the proceeding in abeyance but, rather, was required either to grant the NITU extension or to authorize final abandonment. By decision served November 14, 1996, we: (1) continued to hold the proceeding (including the NITU extension request) in abeyance; (2) directed UP to undo its acquisition of the line from IN&P or to file an application or a petition for exemption to acquire the line; and (3) denied CCC's petition for administrative review.

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[4] The public use condition expired on May 28, 1996.

[5] On June 21, 1996, two additional trail use requests were filed by Friends and the City of Weiser, ID (the City), although the City was actually seeking trail use over the 0.5-mile segment of line sought to be abandoned in STB Docket No. AB-33 (Sub-No. 100X). On June 24, 1996, UP agreed to negotiate with those parties.

By letter filed December 10, 1996, IDPR notified the Board that Friends would take its place as the new trail use negotiating party.[6] UP agreed. On February 28, 1997, a new NITU decision was served which: (1) denied CCC's letter-petition opposing IDPR's extension request; (2) authorized Friends to negotiate an interim trail use/rail banking agreement with UP; and (3) extended the negotiation period under the NITU for 180 days, until August 27, 1997.

STB Docket No. AB-33 (Sub-No. 100X). By notice served on July 29, 1996, and published at 61 Fed. Reg. 39,512 (1996), the Board exempted UP's abandonment of a 0.5-mile segment of rail line adjacent to the line in Docket No. AB-433 (Sub-No. 2X), extending from milepost 0.5 to the end of the line at milepost 1.0, near Weiser, in Washington County, ID. On August 22, 1996, the City filed a NITU request resulting in the issuance of a decision and notice of interim trail use or abandonment on September 18, 1996.[7] During the negotiating period, on December 6, 1996, Friends, a new potential trail sponsor, filed another NITU request. On December 11, 1996, UP indicated its willingness to negotiate with Friends for trail use/rail banking of the line. Accordingly, by decision served December 20, 1996, a NITU was issued, providing 180 days, until June 18, 1997, for Friends to negotiate an interim trail use arrangement with UP.

STB Finance Docket No. 33305. In compliance with the Board's November 14, 1996 decision in Docket No. AB-433 (Sub-No. 2X), UP filed a notice of exemption on December 12, 1996, to acquire the involved line of railroad from IN&P, subject to negotiations for trail use. Notice of the filing was served on January 3, 1997, and published at 62 Fed. Reg. 441(1997).

By letter filed June 19, 1997, UP notified the Board that it had reached an agreement with Friends on June 17, 1997, regarding interim trail use on the right-of-way in both abandonment proceedings. By letter filed August 13, 1997, UP notified the Board that the right-of-way (including ballast, bridges and culverts) between milepost 0.5 near Weiser and milepost 84.1 at Rubicon had been conveyed to Friends, effective August 2, 1997. By letter filed August 22, 1997, Friends notified the Board that it had acquired the rail corridor.

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[6] Our trail rules specifically provide for the substitution of potential trail sponsors.

[7] Also, a public use condition was imposed for 180 days, which expired on February 24, 1997.

POSITION OF THE PARTIES

CCC, a non-profit corporation, states that many of its members are adjacent landowners that allegedly have reversionary property rights in portions of the right-of-way. CCC asserts again, as in its prior petition for administrative review, that the Board lacked authority in its July 1996 decision to hold the proceeding in abeyance in Docket No. AB-433 (Sub-No. 2X). CCC claims that the Board was required either to grant the NITU extension or to authorize final abandonment.

Moreover, CCC argues that there has been both a de facto and de jure abandonment by IN&P and UP of the subject right-of-way here. CCC asserts that the railroads, by refusing to repair bridges and trestles or to pay taxes on the property, coupled with the physical removal of all rails, ties and crossings, have demonstrated a clear intent to completely abandon the line. CCC contends that, because a trail use agreement was not finalized during the initial negotiation period, and because no extension was granted before that period expired, as of May 28, 1996, the abandonment became final as a matter of law, the agency lost jurisdiction over the lines, and the right-of-way reverted under state law to the adjacent landowners.

CCC adds that Friends is not a "qualified private organization" within the meaning of 16 U.S.C. 1247(d) and is not financially prepared to assume full responsibility for management of the right-of-way. CCC states that Friends' signed statement of willingness to assume financial responsibility for the property, which is all that is required by our Trails Act implementing procedures, is not enough to demonstrate that Friends has the ability to meet the financial and liability conditions in the statute. CCC asserts that the Board's failure to further evaluate whether Friends is financially able to manage the corridor constitutes material error.[8] CCC is concerned that the poor condition of rail structures on the line and the rugged terrain of the right-of-way could lead to significant current and future liabilities as a result of injuries to persons and livestock. CCC also asserts that Friends may not have the financial capability to pay for a variety of tasks and services that it believes will be needed on this

[8] Although CCC's primary ground for reopening is alleged material error, CCC also attempts to show "new evidence" and "changed circumstances" by citing recent flooding in the corridor that allegedly caused severe damage to bridges and trestles, and the withdrawal of local and state government support for the trail. That information is not relevant to the issues before us because they have nothing to do with whether Friends is a qualified trail sponsor. Accordingly, the information will not be discussed further.

right-of-way.[9] CCC suggests that the Trails Act arrangement is merely an attempt by the railroads to unload their liabilities on an underfunded, nonprofit organization. Finally, according to CCC, Friends has not provided any information concerning its financial backing, its net worth, or its ability to actually meet its financial obligations.[10]

For these reasons, CCC asks us to: (1) enter a decision declaring the subject rail line abandoned and denying approval of the proposed transfer of the right-of-way from UP to Friends; or (2) conduct hearings concerning (a) the impact of the proposed transfer on small businesses in the area, (b) whether the subject line should be declared abandoned, and (c) whether Friends is able to assume financial responsibility for the line; or (3) impose a series of environmental and public safety conditions in the event the transfer to Friends is approved.[11]

In reply, Friends asserts that CCC has not shown that it lacks adequate financial resources to be a trail manager or that it does not intend to honor its obligations under the statute. Friends argues that CCC does not indicate anything that Friends should now be doing that it is not doing by reason of financial incapacity. Friends objects to CCC's contention that it is not a "qualified private organization" under 16 U.S.C. 1247(d). Friends asserts that it is as qualified as anyone else to rail bank a right-of-way. Friends states that it has already collected substantial financial resources and that it can rely on donated legal services, engineering services, and construction help. Friends has submitted a copy of its balance sheet (as of July 19, 1997) showing $35,716.72 in assets and no liabilities, and an additional $5,990.50 which is still available

[9] For example, repairing and maintaining bridges, trestles and signage, spraying and controlling noxious weeds, providing fencing, parking and restrooms, conducting an environmental cleanup, and offering such services as fire suppression/fighting, law enforcement, security, search and rescue, and emergency medical response.

[10] Petitioner notes that state and local governments oppose transfer of the corridor and development of a trail, and have refused to provide any funding for those purposes.

[11] CCC also asserts that any trail use negotiations between UP and Friends should be open and involve public hearings, and that the parties should be required to submit a copy of their trail use agreement and copies of any relevant property deeds to the Board, which should evaluate those documents before approving any "deal." However, the procedures established by the Board and the ICC have been repeatedly upheld by the courts. *E.g., National Wildlife Fed'n v. ICC*, 850 F.2d 694, 696-699 (D.C. Cir. 1988); *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990) (*Goos*). If CCC wishes to propose additional requirements, it should file a formal petition for rulemaking setting forth specific suggestions for the Board to consider and providing reasons why the Board should devote its scarce resources to imposing additional regulatory requirements in this area.

in matching grants.[12] Friends has also submitted information regarding weed control and liability insurance.

Friends notes that the Board's role in issuing a NITU is ministerial, and that the agency has consistently deferred to the railroad to determine if the prospective trail user is financially responsible.[13] Finally, Friends asserts that, throughout these proceedings, the railroads have evinced a consistent intent to rail bank the right-of-way and to continue negotiating for interim trail use. Such action, Friends argues, shows that the railroads have never fully abandoned the subject lines and the Board retained jurisdiction to extend the negotiating period in Docket No. AB-433 (Sub-No. 2X).

DISCUSSION AND CONCLUSIONS

The decision to grant or deny a petition to reopen is within the broad discretion of the agency, and only on a showing of a clear abuse of that discretion would a court overrule the agency. *E.g., Bowman Transp. Inc. v. Arkansas Best Freight System, Inc.*, 419 U.S. 281, 294-95 (1974). Under 49 CFR 1115.4, a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. CCC here essentially argues that the Board committed material error warranting reopening of these proceedings in two respects: (1) in improperly holding the proceeding in abeyance in Docket No. AB-433 (Sub-No. 2X), when it was required to either grant an outstanding NITU extension request or to find that the line had been fully abandoned; and (2) in failing to evaluate whether Friends is, in fact, a financially fit trail sponsor.

The first ground is simply a rehash of an argument CCC made previously and which we rejected. In our November 14, 1996 decision in Docket No. AB-433 (Sub-No. 2X), we stated at page 3:

> In its petition, CCC asserts that the Board lacked authority to hold the proceeding in abeyance but, rather, was required either to grant the NITU extension or to authorize abandonment. The petition will be denied. The Board has authority to control its own docket. In exercising that authority, we may hold a proceeding in abeyance if we conclude that doing so would be the best course of action.

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[12] CCC responds that Friends' assets are "woefully inadequate" and that its balance sheet is "questionable."

[13] In this regard, in its August 26, 1997 letter, UP states that it and Friends have entered into an agreement by which the latter has assumed financial and managerial responsibility, effective upon closing of a transfer of the line to Friends. UP adds that it is satisfied that Friends has adequate financial capacity to discharge its responsibilities with respect to the property.

Here, the Director appropriately decided to defer a ruling on the extension request pending the filing of further information on the reconveyance.

We added,

We also reject CCC's assertion that, because the NITU negotiation period has expired, a full abandonment has occurred and our jurisdiction over this matter has been lost * * *. A railroad must take action to exercise abandonment authority. Moreover, the Board does not lose jurisdiction over the underlying right-of-way unless the railroad's action is to fully abandon the line, as opposed to exercising the lesser included authority to discontinue service over the line. Here, the parties' expressed desire and intention to continue trail use negotiations beyond the 180-day period, and the railroads' joining in the requests for more time, show that there was no intent to fully abandon the line. Thus, we retain jurisdiction over the property.

Nothing in CCC's petition to reopen warrants a different conclusion here. *See, e.g., Birt v. STB*, 90 F.3d 580, 588 n.15 (D.C. Cir.), *reh'g denied*, 98 F.3d 644 (D.C. Cir. 1996) (agency does not lose jurisdiction over a line where there is contemporaneous evidence suggesting that the railroad intended to retain control over the line until a rails-to-trails conversion had been negotiated, rather than abandoning the line).[14]

We now turn to CCC's second ground for reopening, that the agency committed material error by failing adequately to evaluate whether Friends is a financially fit trail sponsor. There are two parts to CCC's argument. CCC claims first that we erred in not assessing Friends' financial fitness when we issued the NITU and second, that we should consider Friends' fitness now.

CCC's argument that we should have done more to evaluate Friends' fitness when we issued the NITU ignores the fact that Friends filed the statement of willingness required by our Trails Act implementing procedures. Friends, by filing the required statement of willingness, consented to assume responsibility for managing the right-of-way and for legal liability and for payment of taxes for the period of any interim trail use. Friends also agreed to comply with the statutory rail banking condition in section 1247(d). Accordingly, when UP agreed to negotiate a trail arrangement with Friends, we properly issued a NITU allowing negotiations to begin.

Congress clearly intended to preserve as many rail corridors as possible under section 1247(d). *See, Preseault v. ICC*, 494 U.S. 1, 19 (1990) (*Preseault*). Under the statute, a prospective trail sponsor may acquire the right-of-way through "donation transfer, lease, sale or otherwise" so long as the financial and

[14] In *Birt*, the court expressly found that we have authority to extend the Trails Act negotiation period after the original NITU has expired provided extension was sought prior to the expiration.

rail banking requirements of the statute are met. Moreover, any "State, political subdivision or qualified private organization" can invoke section 1247(d). In these circumstances, we see no reason to change our longstanding practice of reading the word "qualified" in the statute to mean any private organization willing to assume responsibility for the line and agree to rail banking. *See, T and P Railway--Abandonment Exemption--In Shawnee, Jefferson and Atchison Counties, KS*, Docket No. AB-381 (Sub-No. 1X) (STB served February 20, 1997) (*T and P Railway*), *reversed on other grounds, Becker v. STB*, 132 F.3d 60 (D.C. Cir. 1997). Our Trails Act procedures have been in effect for more than 10 years. Yet no one has provided us with evidence suggesting any problem with trail sponsors failing to assume financial responsibility for the rights-of way they manage under the Trails Act.

Furthermore, a railroad presumably would not agree to negotiate with a prospective trail sponsor unless the railroad believes the potential trail sponsor will be able to manage the right-of-way and assume legal liability and pay taxes. We appropriately defer to the railroad's decision to negotiate a Trails Act arrangement to determine if the prospective trail sponsor is financially responsible. The function of a trail condition is to delay the railroad's right to consummate the abandonment for the negotiating period and the period of any interim trail use. Pending an agreement with the proponent of a trail, or the consummation of the abandonment, the right-of-way remains the responsibility of the railroad. It must pay taxes, assume liability and maintain the right of way. If a railroad does not think a proponent is likely to meet its obligations, it is hard to see why the carrier would agree to negotiate with the potential trail sponsor. Thus, the carrier is the most appropriate party to determine whether any offer of negotiations is likely to prove successful, both in meeting the railroad's desires and in fulfilling the statutory and regulatory rail banking and liability requirements of the Trails Act.

Requiring the proponent of a trail to provide detailed financial information or to pass a fitness test before the Board issues a trail condition could deter or delay interim trail use, which would be contrary to Congress' intent to facilitate and encourage rail banking and interim trail use on lines that otherwise would be abandoned. Moreover, the primary purpose of a fitness test would be to protect a railroad from wasting its time negotiating with an unfit trail sponsor.[15]

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[15] As the courts have repeatedly found, if there is any taking of property interests by deprivation of, or deferral of, the right to reversion of the property, claims for compensation can be addressed to the Court of Federal Claims under the Tucker Act. *See, Preseault; Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996).

However, the railroad already has the ability to protect itself from that result merely by refusing to consent to the issuance of the trail condition. In these circumstances, we see no reason to change our longstanding practice of not routinely requiring detailed financial or other information from potential trail sponsors and railroads in Trails Act cases. Given our limited, ministerial role in administering this statute, and the fact that the railroad is the real party in interest, we can be assured that the Trails Act has been properly invoked and that its requirements will be met when (1) the prospective trail sponsor files the required statement of willingness and (2) the railroad that otherwise would be entitled to fully abandon the line voluntarily agrees to negotiate a Trails Act arrangement.

CCC's second argument in this regard is that we should consider Friends' financial fitness now. In *T and P Railway*, at page 5, we indicated that if a trail use arrangement is successfully negotiated and a landowner or other interested party presents evidence to call into question the continued application of the Trails Act, we would reopen the proceeding to afford the trail user an opportunity to demonstrate that it continues to meet the requirements of the statute. We stated that if we determined that the trail group does not have the ability to meet the financial and liability conditions of the statute, the trail condition would be involuntarily revoked and the line declared fully abandoned, at which point the right-of-way would no longer be part of the national transportation system, and any reversionary interests in the property would vest. Because CCC has raised fitness issues, and the parties have presented evidence on them, we will consider Friends' ability to continue to meet the financial and liability requirements of the statute. In doing so, we will clarify the kind of showing we would require to involuntarily revoke a trail condition on financial fitness grounds.

Taxes. Local governments often have a right to collect taxes from those who build trails. If a state or local government could demonstrate that a trail manager had not or was not likely to meet its obligation to pay taxes, we would find that the financial conditions for interim trail use had not been met. We would then require that this deficiency be remedied, or that the trail condition be involuntarily revoked. No taxing authority has made any such claim here, however.

Liability. Assumption of liability is only meaningful if the party with the potential liability is adequately insured or financially responsible. Under the Trails Act, the trail sponsor assumes liability only when it enters into an agreement with the railroad pursuant to 16 U.S.C. 1247(d) and our Trails Act rules. Because the railroad may have some exposure if the trail sponsor incurs a liability it cannot satisfy, we think it is reasonable to rely in the first instance

on the railroad's protection of its own interests. Therefore, it is appropriate to require that someone raise this issue before we inquire into it.

Here, CCC has called into question Friends' ability to satisfy any liability it might incur arising out of interim use of this right-of-way as a trail. But Friends in reply states that it has purchased liability insurance in an amount adequate to provide $6 million in coverage per incident and $7 million aggregate. CCC does not state that this amount is inadequate. Moreover, we have no reason on this record to find that this amount of insurance is insufficient. In these circumstances, we conclude that CCC has not shown that Friends is unable to carry out its obligation to assume liability for injuries arising out of the recreational use of the trail under section 1247(d).

Management. The statute and our rules require that a trail sponsor assume responsibility for the management of the trail. CCC claims that Friends' capitalization for an 87-mile trail is "woefully inadequate." But this argument presumes that Friends is under an affirmative duty to develop a trail for advanced recreational use. In fact, as we explained in *T and P Railway*, quoting *Missouri Pacific R. Co.--Aband. In Okmulgee, Okfuggee, Hughes, Pontotoc, Coal, Atoka, and Bryan Counties, OK*, ICC Docket No. AB-3 (Sub-No. 63) (ICC served January 4, 1991), the Trails Act does not require the trail to be "developed" in any particular way. There can be differing types or levels of trail use, and the agency has never become involved in determining the type or level of trail for a specific right-of-way. Moreover, there is no time limit for how quickly a trail must be developed to its intended level of use.

Our chief concern, once a trail condition has been imposed, is that the statutory rail banking condition not be compromised, and that nothing occur that would preclude a railroad's right to reassert control over the right-of-way at some future time to revive active service. CCC, however, has not alleged that it would be impossible to reinstitute rail service over these lines.

In addition to maintaining the integrity of rail banking, Friends is obligated to use the right-of-way so that it does not become a public nuisance. However, that is a state or local requirement, not a Board requirement. Federal preemption does not extend to the legitimate exercise of police power by states and localities. In *Iowa Southern R. Co.--Exemption--Abandonment*, 5 I.C.C.2d, 496, 505 (1989) (*Iowa Southern*), *aff'd sub nom. Goos*, the ICC said,

> We note, however, that a trail use must comply with State and local land use plans, zoning ordinances, and public health and safety legislation * * *. This local regulation can address the Landowners' concerns about such issues as vandalism or noise * * *. Indeed, the State and local agencies in the area are attuned to the specific interests and needs of their communities * * *. Nothing in our Trails Act rules or procedures is intended to usurp the right of state, regional and local entities to impose appropriate safety, land use, and zoning regulations on recreational trails.

See also, e.g., Rail Abandonments--Use of Rights-Of-Way As Trails--Supplemental Trails Act Procedures, Ex Parte No. 274 (Sub-No. 13) (ICC served May 26, 1989) (rejecting, following full notice and comment rulemaking proceeding, argument that the agency's Trails Act implementing procedures should address maintenance along rights-of-way or require railroads and/or trail groups to report to the agency on the outcome of trail negotiations).

State and local laws vary from jurisdiction to jurisdiction. Because we cannot become familiar with all of those laws, it would be inappropriate, if not impossible, for us to try to establish a standard by which a trail sponsor could demonstrate its fitness to manage and maintain a particular trail. Nor has CCC introduced evidence to show that Friends has violated any particular state or local laws, or that its concern that this right-of-way may not be adequately maintained while it is used as a trail cannot be appropriately addressed at the state or local level.

In short, we and the ICC acted in a manner consistent with our limited responsibilities under the Trails Act in issuing trail conditions here. Moreover, CCC has failed to demonstrate that Friends is an unfit trail user or that we lost jurisdiction over this property. Consequently, there is no basis for us to reopen these proceedings to involuntarily revoke the NITUs granted in this proceeding or to declare the line fully abandoned.

In addition, we must reject CCC's request that we impose a number of environmental and public safety conditions here. The requested conditions relate to concerns beyond our limited Trails Act authority. In *Iowa Southern*, 5 I.C.C.2d at 502-03, the ICC stated:

> Our role and responsibilities under the Trails Act are quite limited. We do not decide whether rail banking and use of the right-of-way as a recreational trail is desirable for a particular line of railroad; Congress has itself made that determination (for all lines) in Section 1247(d) * * *. Nor do we have any discretion under the Trails Act, other than to determine whether the statute has been properly invoked and the statutory requirements (regarding liability and rail banking) met * * *. We lack authority to force the parties to negotiate where recreational use could benefit the environment, to impose conditions upon the parties' ability to use the Trails Act, or to refuse to issue a NITU or CITU on environmental grounds. No purpose would be served by an examination of possible environmental consequences when it cannot affect our action. In short, our issuance of a NITU or CITU under the Trails Act is only a ministerial act, not a "major Federal action" to which NEPA would apply.

The Eighth Circuit affirmed this determination in *Goos*.

Finally, we find no basis for oral hearing here. A thorough and accurate record has already been developed by the parties. It has not been shown that cross-examination is needed at this point in time to resolve any disputed issues

of material fact, and witness demeanor has not been shown to be a matter requiring oral hearing in these proceedings. For these reasons, CCC's petitions requesting that we reopen these proceedings and hold an oral hearing are denied.

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

It is ordered:

1. CCC's petition to reopen these proceedings is denied.
2. CCC's request for oral hearing is denied.
3. This decision is effective on April 1, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.