

SERVICE DATE – JUNE 22, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 874 (Sub-No. 1X)

SIERRA NORTHERN RAILWAY—ABANDONMENT EXEMPTION—  
IN YOLO COUNTY, CAL.

Digest:<sup>1</sup> This decision permits the abandonment of approximately 0.70 miles of rail line in Yolo County, Cal., subject to standard employee protections.

Decided: June 20, 2020

On March 19, 2020, Sierra Northern Railway (Sierra), filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 0.70 miles of railroad line extending between approximately milepost 3.10 and approximately milepost 3.80, in Yolo County, Cal. (the Line). On April 6, 2020, Sierra filed a supplement to its petition. Notice of Sierra's petition was served and published in the Federal Register on April 8, 2020 (85 Fed. Reg. 19,791).

No replies opposing Sierra's petition were filed. The Board will grant the exemption from 49 U.S.C. § 10903 for the Line, subject to standard employee protective conditions.

BACKGROUND

According to Sierra, part of the Line sits atop the Sacramento Weir, an essential element in the City of Sacramento's flood control system.<sup>2</sup> (Pet. 1.) Sierra states that there is an extreme risk of flooding in the Sacramento region and that it is seeking to abandon the Line because the U.S. Army Corps of Engineers (USACE) and the Sacramento Area Flood Control Agency (SAFCA) are in the process of implementing a critical flood control improvement project that will require, among other things, removal of the Line so that the Sacramento Weir can be widened. (Id. at 2-3.) Sierra states that it will convey its property interest in the Line to SAFCA

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> According to Sierra, the Sacramento Weir is a structure that acts as a flood safety valve, allowing excess flood waters to spill out of the adjacent river system and away from populated areas of Sacramento and West Sacramento. The Weir also reduces the pressure on the levee system below the Weir. (Pet. 4.)

soon after consummating the abandonment, and that SAFCA will use that property to implement the flood control project. (*Id.* at 11.)

Sierra also states that the Line is part of its Woodland Branch, which extends a distance of approximately 16.4 miles from West Sacramento to Woodland, Cal., where it terminates. (*Id.* at 6.) According to Sierra, it transports traffic over the Woodland Branch (including the Line) to three customers in Woodland that receive rail service directly at their facilities. Sierra further states that four other customers in Woodland use Sierra's facilities for car storage or car repair operations.<sup>3</sup> According to Sierra, the three customers that receive direct rail service have indicated that they plan to use trucks as an alternative to rail service, while the four other customers will carry out their storage and repair operations elsewhere. (*Id.*) Sierra also states that none of these customers oppose its abandonment petition and includes letters of support from two customers, Prime Conduit Inc and Adams Grain Co. (*Id.* at 6, Ex. 7 at 5-6.)

Sierra explains that once the Line is removed and expansion of the Sacramento Weir has been completed, the only way to reconnect the Woodland Branch over the Weir would be to construct a new rail bridge, which would cost approximately \$30 million. (*Id.* at 7.) Sierra states that the current traffic on the Woodland Branch does not generate sufficient revenue to justify this construction. (*Id.*) Sierra also states that it is not seeking authority to abandon the entire Woodland Branch, however, because it has been considering a possible change to the configuration of rail lines in the Woodland and Sacramento area, including additional track construction, that would allow continued use of portions of the Woodland Branch as part of the interstate rail network. (Pet. at 7 n.14.)

Sierra states that construction on the Weir expansion is expected to begin by the summer and therefore requests expedited consideration of its petition. (*Id.* at 12.) In addition, Sierra seeks exemptions from the offer of financial assistance (OFA) procedures of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905 and waivers of the corresponding regulations, as well as waiver of the interim trail use regulations at 49 C.F.R. § 1152.29. (*Id.* at 8, 10-12.)

On April 6, 2020, Sierra filed a supplement to its petition. In the supplement, Sierra addresses the fact that, if the Board were to grant the abandonment, the northern segment of the Woodland Branch (from milepost 3.80 to Woodland) would become physically disconnected from the rest of the interstate rail network. (Suppl. 1.) Sierra states that agency precedent holds that the Board “does not generally allow track to which a common carrier obligation is attached to become isolated from the rail system as a result of the abandonment of an adjoining segment.” (*Id.* at 2 (citing ABE Fairmont, LLC—Aban. Exemption—in Fillmore Cty., Neb. (ABE Fairmont 2018), AB 1106X et al., slip op. at 4 n.3 (STB served Jan. 29, 2018).) Sierra explains, however, that it is not yet a certainty that the northern segment will be permanently disconnected from the interstate rail network. (*Id.*) Sierra describes in more detail the possible change to the configuration of the rail lines in the area, which it refers to as the Realignment Project. According to Sierra, under the Realignment Project, the Woodland Branch could be reconnected to the interstate rail network in the future. (*Id.* at 3.) Sierra adds that if it becomes clear that the

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<sup>3</sup> Sierra states that it transported a total of 507 cars on the Line in 2018 and 463 cars in 2019. (Pet. 6.)

Realignment Project will not go forward, it will seek abandonment authority for the northern segment. (Suppl., V.S. Beard 3.) It notes that if the Board were to require Sierra to seek authority to abandon the northern segment at this time, the ongoing efforts to realign the tracks in that area—including reconnection of the northern segment to the interstate rail network—would likely cease. (Id.)

On April 8, 2020, SAFCA submitted a letter in support of Sierra’s abandonment petition. SAFCA explains that, in 2018, Congress provided approximately \$1.6 billion to expedite construction of the flood control project, which includes widening the Sacramento Weir. (SAFCA Letter 1.) On April 10, 2020, the Board received a letter from U.S. Representative Doris Matsui expressing her support for the abandonment petition so that the flood control project can proceed as expeditiously as possible.

## DISCUSSION AND CONCLUSIONS

Stranded Segment Issue. The Board has held in past cases that where there is a common carrier obligation attached to a particular segment of track, it will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment. See ABE Fairmont, LLC—Aban. Exemption—in Fillmore Cty., Neb., AB 1106X et al., slip op. at 3 (STB served Aug. 17, 2017); Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, & Lane Ctys., Or., AB 515 (Sub-No. 2), slip op. at 12 (STB served Oct. 31, 2008).

Here, Sierra concedes that the northern segment would become physically disconnected, at least temporarily, if the abandonment were granted and consummated. However, under the unique circumstances of this case, it is reasonable and in the public interest to allow the abandonment of the Line to go forward. Sierra states that all of its customers served over the Line have found alternative transportation and service options, and in fact no customer has opposed the abandonment. In addition, unlike other cases involving stranded segment issues, there remains a reasonable likelihood that rail service could be re-established over the northern segment in the foreseeable future. Cf. ABE Fairmont 2018, AB 1106X et al., slip op. at 5 (rail carrier of potentially stranded segment no longer existed and underlying rail estate had been sold); Cent. Or. & Pac. R.R., AB 515 (Sub-No. 2), slip op. at 1, 12 (two potentially stranded segments were approximately 70 and miles 90 miles from point of connection to the interstate rail network). Under the Realignment Project discussed by Sierra, a new connection could be constructed from the terminus of the Woodland Branch to a rail line owned by Union Pacific Railroad Company (UP) and leased by the California Northern Railroad (CFNR).<sup>4</sup> The

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<sup>4</sup> Aerial maps in the Board’s Railroad Map Depot show that the Woodland Branch terminates within a few hundred feet of the UP/CFNR line, see STB R.R. Map Depot, Nat’l Rail Network Map, <https://arcg.is/18KDqn> (enter “Main Street, Woodland, CA” in search box) (last visited June 12, 2020), and a 1981 U.S. Geological Survey topographical map appears to show that a connection between the Woodland Branch and the UP/CFNR line existed at one time, see U.S. Geological Survey, Woodland Quadrangle, California-Yolo Co. Topographical Map (1952, photorevised 1981), [https://ngmdb.usgs.gov/h-bin/tv\\_browse.pl?id=8d5f0326983525ca3981992d08c6cac0](https://ngmdb.usgs.gov/h-bin/tv_browse.pl?id=8d5f0326983525ca3981992d08c6cac0) (last

Realignment Project has been the subject of feasibility studies undertaken by local agencies in the region.<sup>5</sup> Although it is not a certainty that the Realignment Project will be implemented, the fact that it has been, and continues to be, seriously studied shows that it is more than merely speculative. Moreover, requiring Sierra to seek to abandon the northern segment at this time could diminish support for those plans, reducing the possibility of restoring rail service over the segment and improving rail service in the area generally.

The record shows that the Weir expansion project, which is dependent on authorization of, and consummation of, the proposed abandonment of the Line, is of critical importance. According to Sierra:

[USACE] concluded that flood control facilities in the area are not adequate and that “[a]n unacceptably high risk of flooding from levee failure threatens the public safety of approximately 530,000 people. . . .” In 2015, the City of Sacramento concluded that of all the natural and manmade hazards facing California citizens, “flooding poses the greatest threat to the residents of Sacramento.”

(Pet. 2 (footnotes omitted).) Sierra also states that “Sacramento has concluded that the ‘City currently has the greatest flood risk in the nation,’ where flood risk is defined as probability of flood times consequences.” (*Id.* at 4 (footnote omitted).)

The record shows that, in the specific circumstances presented here, allowing the proposed abandonment to go forward notwithstanding the possibility of creating a stranded segment is reasonable and in the public interest. *Cf. RLTD Ry. v. STB*, 166 F.3d 808, 814 (6<sup>th</sup> Cir. 1999) (recognizing that the Board may take into account “over-riding interests of interstate commerce”). Any shippers that would be affected have identified alternative transportation and service options, and no shippers have opposed the abandonment. Moreover, possible reconnection of the northern segment to the interstate rail network, which is being studied as part of a preexisting track relocation proposal, would eliminate the possibility of a permanently disconnected segment. Precluding the proposed abandonment from going forward would not only reduce the likelihood that the northern segment will be reconnected to the interstate rail system but also significantly impede an urgently needed, major public project that

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visited June 12, 2020) (the topographical map is available through the U.S. Geological Survey’s TopoView website at <https://ngmdb.usgs.gov/topoview> (click on “Get Maps” and enter “Woodland, CA” into search field.)). Under the Realignment Project, the connection between the two rail lines would be constructed a few hundred feet north of where this previous connection appears to have existed. (Suppl., V.S. Beard, Ex. A-9.)

<sup>5</sup> Various local agencies in the region have formed the Yolo Rail Relocation Partnership. Upon receiving a grant from the U.S. Economic Development Administration in 2014, consultants were hired to prepare a rail line relocation economic impact study and strategic implementation plan. (Suppl., V.S. Beard, Ex. A-4, A-5.) The study and plan were released in three parts in September 2015 and March 2016. *See* Yolo Rail Relocation, Yolo Cty., <https://www.yolocounty.org/general-government/general-government-departments/county-administrator/county-administrator-divisions/intergovernmental-affairs/yolo-rail-relocation> (last visited June 12, 2020).

has received funding from Congress and is vital to enhancing the safety of more than half a million people in the Sacramento area. Given all of these circumstances, the Board finds that it is reasonable and in the public interest to permit the abandonment notwithstanding the resulting physical disconnect between the remaining segment of the Woodland Branch and the rest of the interstate rail network. However, as Sierra has suggested, if it becomes apparent that the Realignment Project will not proceed and the northern segment will be permanently disconnected from the interstate rail network, Sierra should immediately return to the Board to seek abandonment authority for the northern segment.

Exemption from 49 U.S.C. § 10903. Pursuant to 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. There is no local traffic on the Line and, even though the abandonment would prevent Sierra from providing overheard service to shippers on the northern segment of the Woodland Branch, those shippers have all identified alternative transportation and service options and none have opposed the abandonment. Under these circumstances, granting an exemption for abandonment of the Line would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (7), (15).

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power.<sup>6</sup> There are no shippers on the Line itself, and, as noted, Sierra states that the shippers elsewhere on the Woodland Branch do not oppose abandonment of the Line. No shipper has objected to that representation. The record includes no other indicia that regulation is needed to protect shippers from the abuse of market power.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon Sierra the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental and Historic Review. Sierra submitted a combined environmental and historic report with its petition and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. The Board's Office of Environmental

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<sup>6</sup> Because regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope.

Analysis (OEA) has examined the report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) served on April 22, 2020, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment. Comments on the Draft EA were due by May 22, 2020. OEA received one comment from the California Department of Parks and Recreation, Office of Historic Preservation (SHPO), which agrees with OEA's determination in the Draft EA that the proposed abandonment would not affect historic properties. OEA served a Final Environmental Assessment on May 28, 2020, recommending no environmental or historic preservation conditions. Based upon OEA's assessment, the Board concludes that the proposed abandonment would not significantly affect either the quality of the human environment or the conservation of energy resources and that no environmental conditions are required.

Offers of Financial Assistance. Sierra also petitions the Board to exempt it from the OFA requirements of 49 U.S.C. § 10904. Because no formal expressions of intent to file an OFA to acquire the Line or subsidize continued rail service were filed by the April 20, 2020 deadline, the Board will not consider OFAs in this case and Sierra's petition for exemption from § 10904 is denied as moot.

Public Use. Sierra also seeks exemption from the public use provisions of 49 U.S.C. § 10905. Because requests for a public use condition were due by April 28, 2020, and no requests were received, Sierra's request for exemption from § 10905 will be denied as moot.

Trail Use. Sierra also requests a waiver of the interim trail use regulations at 49 C.F.R. § 1152.29. However, waiver of the interim trail use regulations is unnecessary here because, under the Trails Act, the trails use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails (49 CFR Parts 1105 & 1152), 2 I.C.C. 2d 591, 598 (1986). Accordingly, if Sierra does not consent to a request for a notice of interim trail use or abandonment (NITU), none will be issued. In any event, requests for a NITU under § 1152.29 were due by April 28, 2020 and none were filed. For these reasons, Sierra's request for waiver of the interim trail use regulations will be denied.

Request for Expedition. As noted, Sierra seeks expedited consideration of its petition due to the expected start of construction on the Weir expansion at the beginning of summer. For the reasons discussed above, such expedited consideration is warranted, and the Board will make the exemption effective immediately.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 Sierra's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line.

2. The exemption will be effective on June 22, 2020.

3. Sierra's requests for exemptions from the OFA procedures and the public use condition procedures are denied as moot.

4. Sierra's request for waiver of the interim trail use regulations is denied.

5. Petitions to reopen must be filed by July 7, 2020.

6. Pursuant to 49 C.F.R. § 1152.29(e)(2), Sierra shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Sierra's filing of a notice of consummation by June 22, 2021, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman, Fuchs, and Oberman.