

SERVICE DATE – AUGUST 13, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1330X

THE STATE OF OKLAHOMA BY AND THROUGH THE OKLAHOMA DEPARTMENT
OF TRANSPORTATION—ABANDONMENT EXEMPTION—IN PAYNE COUNTY,
OKLA.

Decided: August 13, 2024

The State of Oklahoma by and through the Oklahoma Department of Transportation (ODOT) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service for ODOT to abandon an approximately 3.2-mile stub-ended rail line extending between milepost 30.74 and milepost 27.54 in Stillwater, Payne County, Okla. (the Line).¹ Notice of the exemption was served and published in the Federal Register on June 18, 2024 (89 Fed. Reg. 51,585).

Environmental and Historic Review.

The Surface Transportation Board’s (Board) Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on June 24, 2024, recommending that one condition be imposed on any decision granting abandonment authority. OEA recommended that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad’s abandonment-related salvage activities, ODOT will immediately cease all work and notify OEA, interested federally recognized tribes, the University of Oklahoma, Oklahoma Archaeological Survey (OAS), and the Oklahoma Historical Society (State Historic Preservation Office or SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with OAS, the SHPO, interested federally recognized tribes, ODOT, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Comments on the Draft EA were due by July 10, 2024. OEA served its Final Environmental Assessment (Final EA) on July 15, 2024. The Final EA notes that no new comments were received, and OEA therefore continues to recommend that the condition recommended in the Draft EA be imposed. It also recommends that reference to “the railroad’s” be deleted from the first sentence of the condition.

¹ In the same jointly filed verified notice, Stillwater Central Railroad, L.L.C., sought to discontinue service over the Line. See Stillwater Cent. R.R.—Discontinuance Exemption—in Payne Cnty., Okla., AB 1040 (Sub-No. 1X) (STB served June 18, 2024).

Compliance with 49 C.F.R. § 1152.22(e)(4).

On June 28, 2024, the National Association of Reversionary Property Owners (NARPO) filed a comment claiming that ODOT’s verified notice does not comply with 49 C.F.R. § 1152.22(e)(4). That regulation provides, in part, that “[i]f the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.” NARPO asserts that when ODOT acquired the Line it “should have gotten all the Valuation Maps” associated with the Line. (NARPO Comment 1.) According to NARPO, those maps “would clearly show that many of the parcels” were originally “acquired by easement which according to Oklahoma law, makes them reversionary on abandonment of rail purposes.” (*Id.*)² In a decision served on July 15, 2024, the effective date of the exemption was postponed until further order of the Board, and ODOT was ordered to respond to NARPO’s comment.

ODOT responded on July 18, 2024. It asserts, among other things, that at the time it filed the verified notice, ODOT was unaware of any potential reversionary interests. (ODOT Reply 3.) Moreover, ODOT states that it subsequently conducted a further search of offsite records and explains that “none of the information it has located verifies the existence of reversionary interests or disproves that any reversionary interests exist as related to the Line.” (*Id.* at 4.) Accordingly, ODOT stands by its disclosure that it is not aware of any specific restriction on the title to the property, including any reversionary interests that would affect the transfer of title or the use of property for other than rail purposes. (*Id.*) However, ODOT acknowledges that it is possible some or all of the property could be subject to reversionary interests. (*Id.*)³ NARPO filed a reply on July 22, 2024.

Under 49 C.F.R. § 1152.22(e)(4), an application shall provide a

statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

² NARPO adds that the State of Oklahoma should “provide good governance to its citizens by notifying the abutting property owners” of their reversionary rights should the Line become fully abandoned. (*Id.*) ODOT, however, gave the public notice required under the Board’s rules when it published notice of its intent to abandon the Line in an appropriate newspaper. See 49 C.F.R. § 1105.12. And the Board has expressly declined to amend its rules to require direct notice be given to adjacent landowners, finding that such a requirement would be time-consuming, burdensome, and unnecessary. See Nat’l Ass’n of Reversionary Prop. Owners—Pet. for Rulemaking, EP 749 et al., slip op. at 6-7 (STB served Oct. 2, 2018).

³ ODOT adds that, even if there are reversionary interests, they would not prevent the transfer of the Line for public use or interim trails use under the National Trails System Act, 16 U.S.C. § 1247(d), which, as discussed below, the City of Stillwater (City) seeks for the Line.

49 C.F.R. § 1152(e)(4).

ODOT has complied with the regulation. (See Verified Notice 4.) The duty to disclose title restrictions cited by NARPO is only triggered if the applicant is aware of any such restrictions, and ODOT states it was not aware of any at the time it filed its verified notice. After NARPO raised the issue, ODOT investigated further and presented the results. That is sufficient here. Moreover, any prior omission would appear to be harmless as the regulation is focused on providing notice to those seeking to acquire or use the Line for other public purposes, and the City has not raised similar concerns, nor has any other party expressed interest in using the Line for public purposes.

With this matter resolved, there is no reason to further delay the effective date of the exemption. As such, the exemption will become effective August 14, 2024.

Interim Trail Use.

On June 27, 2024, the City filed a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act to establish interim trail use/railbanking on the Line. ODOT responded on the same day that it is willing to negotiate an interim trail use agreement with the City.

The City's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and ODOT has indicated that it is willing to negotiate an agreement for interim trail use with the City. Therefore, a NITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2), (h). If no agreement is reached within one year, ODOT may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The notice served and published in the Federal Register on June 18, 2024, exempting the abandonment of the Line described above shall take effect August 14, 2024, and is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the parties to negotiate for interim trail use for the rail line, for a period of one year from the service date of this decision and notice, until August 13, 2025.

3. The abandonment is also subject to the following condition:⁴ in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during abandonment-related salvage activities, ODOT shall cease all work and notify OEA, interested federally recognized tribes, OAS, and the SHPO pursuant to 36 C.F.R.

§ 800.13(b). OEA will then consult with OAS, the SHPO, interested federally recognized tribes, ODOT, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

7. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by August 13, 2025, interim trail/rail banking use may be implemented. If no agreement is reached, ODOT may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

⁴ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with this condition would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.