

SERVICE DATE – OCTOBER 8, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1265X

LEHIGH VALLEY RAIL MANAGEMENT, LLC—ABANDONMENT EXEMPTION—IN
CAMBRIA COUNTY, PA.

Decided: October 7, 2019

On March 8, 2019, Lehigh Valley Rail Management, LLC (LVRM), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a line of railroad extending between milepost RJC 6.4 in Munster Township and milepost RJC 10.45189 in Ebensburg Borough, and between milepost 15.355 (RJC 10.45189) and milepost 16.934 in Cambria Township, in Cambria County, Pa. (the Line). Notice of the exemption was served and published in the Federal Register on March 28, 2019 (84 Fed. Reg. 11,854). The exemption became effective on April 27, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on April 2, 2019, solicited public comments, and issued a Final EA on April 19, 2019. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, by decision served on April 26, 2019, a finding of no significant impact under 49 C.F.R. § 1105.10(g) was made, pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

The April 26 decision also imposed a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28, as requested by the Cambria County Conservation and Recreation Authority (CCCRA).¹ The decision did not grant CCCRA's additional request for a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), because CCCRA's request did not include the required map and its statement of willingness did not properly accept responsibility for all three of the elements required under the Trails Act and 49 C.F.R. § 1152.29(a)(2); CCCRA was permitted, however, to supplement its NITU request.

On June 4, 2019, CCCRA submitted a supplement to its request for a NITU. Although the supplement included a map, it did not correct the deficiency in the statement of willingness noted in the April 26 decision. Accordingly, in a decision served on June 25, 2019, the Board

¹ The public use condition remains in effect until October 24, 2019.

denied CCCRA's NITU request because, as supplemented, it did not include all the elements required under the Trails Act and § 1152.29(a)(2).²

On July 17, 2019, CCCRA petitioned the Board to reopen the proceeding, reconsider its June 25 decision, and grant a NITU. However, on August 12, 2019, CCCRA filed a request to withdraw that petition and submitted a new NITU request,³ which included a map of the Line and a statement of willingness to accept full responsibility for all three of the required elements under the Trails Act and § 1152.29(a)(2). On August 15, 2019, LVRM confirmed it had not yet consummated the abandonment and stated its willingness to negotiate interim trail use with CCCRA.

Because CCCRA's request now complies with the requirements of 49 C.F.R. § 1152.29 and LVRM is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an interim trail use/rail banking agreement for the right-of-way during the 180-day 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 180 days, LVRM may fully abandon the Line, subject to any outstanding conditions. 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.

It is ordered:

1. This proceeding is reopened.
2. CCCRA's request to withdraw its petition to reopen and reconsider, filed on July 17, 2019, is granted.
3. CCCRA's late-filed request for issuance of a NITU, filed on August 12, 2019, is accepted into the record and is granted. A NITU is issued, effective on the service date of this decision and notice, to permit CCCRA to negotiate with LVRM for trail use for the Line, for a period of 180 days from the service date of this decision, until April 6, 2020.
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

² The June 25 decision also reopened this proceeding and imposed two additional conditions based on supplemental recommendations from OEA.

³ In Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests for interim trail use/railbanking after the due date when good cause is shown. Because there is no indication that the late-filed request will prejudice any party, it will be accepted.

trail 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 ordering paragraph 4 above.

6. 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).

7. If interim trail use 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 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 April 6, 2020, interim trail use may be implemented. If no agreement is reached, LVRM may fully abandon the Line, subject to any outstanding conditions.

9. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.