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SERVICE DATE – JANUARY 4, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1240X

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN FAYETTE COUNTY, PA.

Decided: January 4, 2017

Southwest Pennsylvania Railroad Company (SWP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon .3 miles of rail line between milepost 7 in Uniontown to the end of the line in South Union Township, in Fayette County, Pa. Notice of the exemption was served and published in the Federal Register on December 6, 2016 (81 Fed. Reg. 87,997). The exemption is scheduled to become effective on January 5, 2017.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 9, 2016. In the EA, OEA states that the Pennsylvania Department of Environmental Protection (PADEP) indicated that SWP may need to obtain appropriate permits should any work need to be done that may affect bridges, culverts, or floodplains, specifically relating to the unnamed tributary to Redstone Creek and Coal Lick Run. Accordingly, OEA recommends that a condition be imposed requiring SWP to consult with PADEP prior to commencement of any salvage activities regarding potential impacts to culverts or floodplains, and comply with their reasonable requirements.

Comments to the EA were due December 26, 2016. No comments/comments were received. Accordingly, the condition recommended by OEA in the EA will be imposed.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On November 25, 2016, South Union Township (SUT) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with SWP for acquisition of the right-of-way for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. SUT submitted a statement of its willingness to assume full responsibility for managing the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. SUT also has acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet the responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a

response filed on December 19, 2016, SWP states that it agrees to negotiate for interim trail use/rail banking.

Because SWP agrees to SUT's request for a NITU and SUT's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement 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) and (h). If no agreement is reached within 180 days, SWP may fully abandon the Line. 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 action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on December 6, 2016, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use rail/banking as set forth below to permit SUT to negotiate with SWP for trail use for a period of 180 days from service date of this decision and notice (until July 3, 2017). The abandonment is also subject to the condition that SWP shall consult with PADEP prior to commencement of any salvage activities regarding potential impacts to culverts or floodplains, and shall comply with the reasonable requirements of PADEP.
3. If an interim trail use 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.
4. 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 3 above.
5. 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. See 49 C.F. R. § 1152.29(d)(2) and (h).
6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on 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.

7. If an agreement for interim trail use/rail banking is reached by July 3, 2017 for the right-of-way, interim trail use may be implemented. If no agreement is reached, SWP may fully abandon the line.

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

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