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SERVICE DATE - OCTOBER 2, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X¹

TRINIDAD RAILWAY, INC.–ABANDONMENT EXEMPTION–
IN LAS ANIMAS COUNTY, CO

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: October 1, 2002

On September 1, 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures for out-of-service rail lines at 49 CFR 1152.50 to abandon a 28-mile segment of rail line in Las Animas County, CO, between milepost 2.0 at Jansen and the end of the Trinidad line at milepost 30.0.² Notice of the exemption was served and published in the Federal Register on September 21, 2000, at 65 FR 57239.

On September 18, 2000, the Rails to Trails Conservancy (RTC) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate for rail banking and interim use of the line as a trail. However, on October 21, 2000, Rail Ventures, Inc. (Rail Ventures) timely filed a notice of its intent to invoke the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 in order to acquire the line for continued rail service. Because an OFA takes priority over a request for a NITU, RTC's request was held in abeyance pending the outcome of the OFA process. Rail Ventures' filing, and subsequent extensions, stayed the effective date of the abandonment exemption covered by the notice. On December 5, 2000, Rail Ventures timely filed its OFA, offering to purchase the line.

¹ A decision also served today in a related proceeding, STB Finance Docket No. 34087, Trinidad Railway, Inc. – Lease and Operation Exemption – Kern Valley Railroad Company, dismisses as moot a petition by Trinidad Railway, Inc. and its parent to reopen a December 2001 decision rejecting a notice of exemption to lease and operate this line.

² The earlier procedural history of this and related proceedings is set out more fully in the Board's January 15, 2002 decision. At the time Trinidad submitted the notice to abandon, the line had not carried any traffic for 4 or more years.

Shortly before that, however, on October 31, 2000, after having received notice of Rail Ventures' forthcoming OFA, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it had sought abandonment authority in this proceeding) to Kern Valley Railroad Company (Kern Valley), which subsequently invoked the class exemption procedures at 49 CFR 1150.31 to obtain authorization for the purchase. Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000). Kern Valley stated that it did not acquire the line segment to provide rail service but rather to salvage the rail property once it was abandoned. Kern Valley also acknowledged that the line remained subject to the section 10904 process, a request for issuance of a NITU, and other conditions imposed on the notice of abandonment exemption.

In a decision served December 8, 2000, Rail Ventures was found to be a financially responsible entity, and the effective date of the abandonment exemption was postponed in order to permit the OFA process to proceed. The decision set January 4, 2001, as the date on or before which the buyer or seller could request the Board to establish terms and conditions of the purchase should the parties be unable to reach agreement.

Rail Ventures pursued its OFA, but the parties were unable to reach an agreement on the terms and conditions for sale of the line under the OFA process. Accordingly, Rail Ventures asked the Board to set the terms and conditions and, in a decision served on April 17, 2002, the Board set the purchase price for the line at \$3,830,697 (its net liquidation value). The Board also established terms for transfer of the line and directed Rail Ventures to notify the Board and Kern Valley in writing by April 29, 2002, whether it would accept those terms and conditions.

Rail Ventures accepted the terms and conditions and, by a decision served on May 15, 2002, was authorized to acquire the line. The decision provided for the notice of abandonment exemption to be dismissed upon the sale being consummated.

On July 16, 2002, however, the deadline for consummation of the sale, Rail Ventures filed a petition for clarification of the Board's April 17, 2002 decision setting the terms and conditions and requested an extension of time to consummate the sale. By a decision served on July 16, 2002, the consummation deadline was extended to July 26, 2002, to give the Board time to consider the issues raised by Rail Ventures' petition for clarification. By a decision served on July 25, 2002, Rail Ventures' petition for clarification was denied, as was its request for a further extension. Kern Valley notified the Board by a letter filed on July 29, 2002, that Rail Ventures had elected not to purchase the line. Also, in compliance with the Board's April 17, 2002 decision, Kern Valley gave 30 days' notice that, effective August 28, 2002, it intended to halt common carrier operations on the line and exercise its abandonment authority. By letter filed on August 20, 2002, Kern Valley again stated that it

anticipated ceasing operations on August 28, 2002. Kern Valley further indicated that it did not intend to remove the rails and ties, and that it was not willing to negotiate with RTC for trail use.

When an entity offering to purchase a line later is not willing to accept the terms and conditions set out, the Board will serve a decision vacating the decision postponing the effective date of the decision that granted the abandonment. See 49 U.S.C. 10904 and 49 CFR 1152.27(g)(7). Accordingly, the OFA process will be terminated and the December 8, 2000 decision will be vacated so that the prior abandonment authorization for the line will become effective on the date of service of this decision.

As indicated, a request by RTC for a NITU has been held in abeyance pending the outcome of the OFA process. That process now has been completed, but Kern Valley has stated that it is unwilling to negotiate a trail use agreement with RTC. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonments – Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

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

It is ordered:

1. The OFA process in this proceeding is terminated.
2. The December 8, 2002 decision is vacated to the extent it postponed the effective date of the abandonment so that the OFA process could proceed. The abandonment authority for this line segment will be effective on the service date of this decision.
3. RTC's request for issuance of a NITU is denied.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary