

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 463 (Sub-No. 2X)

ALABAMA RAILROAD CO.—ABANDONMENT EXEMPTION—IN ESCAMBIA,
CONECUH, AND MONROE COUNTIES, ALA.

Decided: May 17, 2019

On March 29, 2019, Alabama Railroad Co. (ALAB) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 47.5 miles of rail line, which extends from approximately milepost 607.3 at Flomaton, Ala., to approximately milepost 655.2 near Tunnel Springs, Ala., including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on April 18, 2019 (84 Fed. Reg. 16,310). The exemption is scheduled to become effective on May 18, 2019.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on April 23, 2019, recommending that two conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that ALAB served a historic report on the Alabama Historical Commission (the Alabama State Historic Preservation Office, or SHPO) pursuant to 49 CFR § 1105.8(c) and noted that because the SHPO had not yet commented, OEA had not been able to consider the SHPO's opinion in determining the impact of the proposed abandonment on historic resources. Accordingly, OEA recommended a condition requiring the railroad to (1) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA), has been completed; (2) report back to the Office of Environmental Analysis regarding any consultations with the SHPO and the public; and (3) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of track and ties) until the Section 106 process has been completed and the Board has removed this condition.

OEA stated that the U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office (USFWS) has identified the Gary bat, Indiana bat, Red Hills salamander, and Orange-nacre mucket as federally endangered, threatened, or candidate species potentially present in the project area. According to OEA, based on the information provided, USFWS does not expect any impacts to these species in connection with salvage-related activities, but USFWS indicates that suitable habitat for the threatened Red Hills salamander is known to be adjacent to the rail

line and within the right-of-way in areas of Monroe County. USFWS recommends that no equipment or materials be stored or placed on any steep slopes in these areas. USFWS also recommends the use of best management practices during salvage activities to protect suitable habitat and conserve the species. Accordingly, to address USFWS's concerns about the Red Hills salamander, OEA recommended a condition requiring that ALAB refrain from storing or placing equipment or materials on any steep slopes and implement the use of best management practices while conducting salvage activities in Monroe County. OEA determined that, with the implementation of the recommended mitigation measure, no federally endangered, threatened, or candidate species would be adversely affected by salvage activities and there would be no adverse effect on areas designated as critical habitat.

OEA issued its final EA on May 9, 2019, noting that no comments to the EA were received and recommending again that the two previously recommended conditions be imposed. Accordingly, based on OEA's recommendation, the conditions proposed in the EA and the final EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On April 26, 2019, the Monroe County Commission (MCC) filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with ALAB to develop a recreational trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and for a public use condition under 49 U.S.C. § 10905. In a response filed on May 14, 2019, ALAB notified the Board that it is willing to engage in interim trails use negotiations with MCC.

With respect to its request for issuance of a NITU, pursuant to 49 C.F.R. § 1152.29, MCC submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the 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. Because MCC's request complies with the requirements of 49 C.F.R. § 1152.29 and ALAB 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) and (h). If no agreement is reached within 180 days, ALAB 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.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting

the abandonment. Here, MCC asks that ALAB be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment exemption. MCC states that the right-of-way would make an excellent recreational trail and that conversion to a trail would be consistent with state and local plans. MCC also asks that ALAB be prohibited from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels, because these structures have considerable value for public purposes. MCC states that a 180-day period is needed because it has not had an opportunity to complete a detailed trail plan or begin negotiations with ALAB.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because MCC has satisfied these requirements, a 180-day public use condition will be imposed, requiring ALAB to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor, other than tracks, ties, and signal equipment, commencing from May 18, 2019, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on November 14, 2019, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until November 13, 2019. If a trail use agreement is reached for a portion of the right-of-way prior to November 13, 2019, ALAB must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, ALAB is not required to deal exclusively with MCC but may engage in negotiations with other interested persons.

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. Upon reconsideration, the notice served and published in the Federal Register on April 18, 2019, 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 MCC to

negotiate with ALAB for trail use for the Line for a period of 180 days from the service date of this decision and notice, until November 13, 2019, and to permit public use negotiations as set forth below for the Line for a period of 180 days commencing from the effective date of the exemption, until November 14, 2019. The abandonment is also subject to the following conditions: (a) ALAB shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA has been completed; ALAB shall report back to OEA regarding any consultations with the SHPO and the public; and ALAB may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition; and (b) ALAB shall not store or place equipment or materials on any steep slopes in Monroe County and shall implement the use of best management practices while conducting salvage activities.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, ALAB may discontinue service. ALAB shall keep intact the right-of-way for the Line including potential trail-related structures on the Line such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the exemption, until November 14, 2019, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

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 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).

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 November 13, 2019, interim trail use may be implemented. If no agreement is reached, ALAB 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.