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SERVICE DATE - FEBRUARY 1, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-167 (Sub-No. 1132X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--BETWEEN
BURGETTSTOWN, WASHINGTON COUNTY, PA, AND COLLIERS,
BROOKE COUNTY, WV

Decided: January 27, 2000

Consolidated Rail Corporation (Conrail)¹ filed a notice under 49 CFR 1152.50 to abandon 9 miles of its Weirton Secondary rail line from milepost 26.7± near Burgettstown, PA, to milepost 35.7± near Colliers, WV. A notice of exemption was served and published in the Federal Register on December 30, 1993 (58 FR 69408). The exemption became effective on January 29, 1994. On January 31, 1994, the National Pike Trail Council (NPTC) filed a petition requesting that an interim trail use condition be imposed in this proceeding and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29. NPTC also acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. By letter filed on February 24, 1994, Conrail agreed to negotiate with NPTC for interim trail use.

By decision and notice of interim trail use or abandonment (NITU) served on March 7, 1994, a 180-day period was authorized for NPTC to negotiate an interim trail use/rail banking agreement with Conrail for the right-of-way. At the request of NPTC, and with Conrail's consent, the negotiation period was subsequently extended by decisions served on August 3, 1994, February

¹ By decision served on July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999).

10, 1995, July 21, 1995, December 28, 1995, August 20, 1996, January 8, 1997, July 10, 1997, January 9, 1998, July 10, 1998, and December 23, 1998.²

In a joint motion filed on December 6, 1999, NPTC, Washington County, PA, the West Virginia State Rail Authority (WVSRA), and Weirton Board of Parks and Recreation Commission (WBPRC) (collectively referred to as petitioners) request the substitution of Washington County as interim user for that portion of the right-of-way between milepost 26.7± and milepost 35.13 at the boundary between Washington County and Brooke County, WV, and the substitution of WBPRC as interim trail user for the remaining portion of the right-of-way between milepost 35.13 and milepost 35.7±. NPTC states that it intends to terminate its trail use along the corridor. WVSRA and WBPRC jointly filed a statement of willingness to assume financial responsibility for that part of the corridor in Brooke County; Washington County filed a statement of willingness to assume financial responsibility for that part of the corridor in Washington County.³

Petitioners have submitted a copy of the extant NITU and statements of willingness to assume financial responsibility by the new trail users. They have also indicated the date of transfer of responsibility for the right-of-way. Petitioners' submission meets the requirements of 49 CFR 1152.29(f), and the requested relief will be granted.

This decision 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 NITU served on March 7, 1994, is vacated.
3. A replacement NITU applicable to Washington County as interim trail user for that portion of the right-of-way from milepost 26.7± to milepost 35.13, and to the West Virginia State Rail Authority and Weirton Board of Parks and Recreation Commission as interim trail users for that portion of the right-of-way from milepost 35.13 to milepost 35.7± is issued, effective on the service date of this decision.

² The most recent extension was scheduled to expire on July 4, 1999.

³ The division of the right-of-way apparently reflects Conrail's agreement with petitioners. WVSRA states that Conrail conveyed its portion of the corridor to WVSRA by deed dated April 27, 1999, and that WVSRA has leased the property to WBPRC for interim trail use. Petitioners state that the date on which responsibility for the right-of-way was to transfer was on July 30, 1999.

4. The new trail users are required to assume, for the term of the agreements, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless a 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.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new users continuing to meet the financial obligations for the right-of-way.

6. If either of the new trail users intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on specified date.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary