

SERVICE DATE – JUNE 25, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1265X

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

Decided: June 24, 2019

On March 8, 2019, Lehigh Valley Rail Management, LLC (LVRM), filed a verified notice of exemption under 49 C.F.R. pt. 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 accordingly by May 10, 2019.

Additional conditions. On May 14, 2019, OEA issued a Supplemental Final EA following receipt of a letter dated May 10, 2019, from the Delaware Nation. The letter states that the Delaware Nation has no objection to the proposed abandonment but requests immediate notification and consultation if an archaeological site or artifacts are discovered during any phase of the proposed abandonment. In light of the Delaware Nation's comment, OEA recommends that an unanticipated discovery condition be imposed.

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

On June 6, 2019, OEA issued a second Supplemental Final EA following the receipt of a letter dated June 4, 2019, from the National Geodetic Survey (NGS). The letter states that NGS has identified one geodetic marker that could be affected by the proposed abandonment. Accordingly, OEA recommends that the Board impose a condition requiring that LVRM consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

Consistent with OEA's recommendations, this proceeding will be reopened, and the additional conditions recommended in the Supplemental Final EAs will be imposed.

Supplemental NITU request. On June 4, 2019, CCCRA submitted a supplement to its request for a NITU. Although the supplement includes a map, it does not correct the deficiency in the statement of willingness noted in the April 26 decision. As in its original request, CCCRA's statement of willingness does not accept full responsibility for all three of the required elements under the Trails Act and § 1152.29(a)(2), but rather refers to its responsibility with respect to management of the right-of-way and legal liability arising out of the transfer or use of the right-of-way in the alternative. Because CCCRA's NITU request, as supplemented, does not include all the elements required under the Trails Act and § 1152.29(a)(2), the request will be denied. See 16 U.S.C. § 1247(d); 49 C.F.R. § 1152.29(a)(2); see also BNSF Ry.—Aban. Exemption—in Larimer Cty., Colo., AB 6 (Sub-No. 494X) (STB served Nov. 28, 2017) (denying a NITU request due to a deficient statement of willingness).

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 March 28, 2019, exempting the abandonment of the Line described above is subject to the following additional conditions. (1) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, LVRM shall immediately cease all work and notify OEA, the Pennsylvania State Historic Preservation Officer (SHPO), and the Delaware Nation Tribal Historic Preservation Officer (THPO), pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, THPO, LVRM, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary. (2) LVRM shall consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

3. CCCRA's request for issuance of a NITU, as supplemented, is denied.
4. This decision is effective on its service date.

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