

SERVICE DATE – APRIL 26, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1265X

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

Decided: April 25, 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 is scheduled to become 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 have been raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line. On April 15, 2019, the Cambria County Conservation and Recreation Authority (CCCRA) filed a request for a public use condition under 49 U.S.C. § 10905 and a notice of interim trail use or abandonment (NITU) under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d).<sup>1</sup> On April 16, 2019, LVRM notified the Board that it is willing to negotiate an agreement for interim trail use with CCCRA and takes no position on the request for a public use condition.

As discussed further below, a public use condition will be imposed, and CCCRA will be permitted to supplement its request for a NITU should it wish to do so.

Public use condition. 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

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<sup>1</sup> CCCRA's request refers to both a certificate of interim trail use (CITU) and a NITU. Under 49 C.F.R. § 1152.29(d), a NITU is used for exempt abandonment proceedings, such as this one.

abandonment. Here, CCCRA requests a public use condition that would prohibit LVRM from (1) 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 authorization, and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. CCCRA states that the right-of-way “would make an excellent recreational trail” that could connect with other trail facilities operated by CCCRA and that the structures sought to be preserved “have considerable value for recreational trail purposes.” CCCRA further states that the 180-day period is needed to assemble a trail plan and negotiate with LVRM.

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 CCCRA has satisfied these requirements, a 180-day public use condition will be imposed, requiring LVRM 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 April 27, 2019, the effective date of the exemption.

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, LVRM is not required to deal exclusively with CCCRA but may engage in negotiations with other interested persons.

Interim trail use/rail banking. Under 49 C.F.R. § 1152.29(a), a NITU request must include: (1) a map depicting the right-of-way proposed to be acquired or used; (2) a statement indicating the trail sponsor’s willingness to assume full responsibility for three things: (i) managing the right-of-way, (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the trail sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) payment of all taxes that may be levied or assessed against the right-of-way; and (3) an acknowledgement that interim trail use is subject to the trail sponsor’s continuing to meet its obligations under (2) and is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Here, rather than accepting full responsibility for all three of the required elements under § 1152.29(a)(2), CCCRA’s statement of willingness refers to elements (i) and (ii) in the alternative by stating “management of, or any legal liability arising out of . . .” (emphasis added). CCCRA’s NITU request also does not include the required map.

If CCCRA wishes to supplement its NITU request accordingly, it is directed to do so by May 10, 2019.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on March 28, 2019, exempting the abandonment of the Line described above is modified to the extent necessary 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 October 24, 2019.
4. Consistent with the public use condition imposed in this decision, LVRM may discontinue service. LVRM shall keep intact the right-of-way for the Line including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until October 24, 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.
5. If CCCRA wishes to supplement its NITU request, it is directed to do so by May 10, 2019.
6. This decision is effective on its service date.

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