

SERVICE DATE

AUG 28 1996

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SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-12 (Sub-No. 159X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY
--ABANDONMENT EXEMPTION--
SACRAMENTO AND EL DORADO COUNTIES, CA

Decided: August 26, 1996

PJC -
file -
New File VI. 8
STB Decision

By decision and notice of interim trail use or abandonment (NITU) served July 27, 1995, the Interstate Commerce Commission imposed a 90-day period expiring October 31, 1995, for Sacramento-Placerville Transportation Corridor Joint Powers Authority (JPA) to negotiate an interim trail use/rail banking agreement with Southern Pacific Transportation Company (SPT) for 37.14-miles of its Placerville Branch from milepost 108.00, near the Nimbus rail station, to milepost 145.14, near the Diamond Springs rail station, in Sacramento and El Dorado Counties, CA.

By decisions served October 17, 1995, April 29, 1996, and June 25, 1996, respectively, JPA was granted extensions of the trail use negotiation period, and the third extension is scheduled to expire on August 31, 1996.

JPA is negotiating to acquire SPT's entire Placerville Branch from milepost 94.76, at Brighton, to milepost 147.6, at Apex. JPA is to acquire the following segments: (1) the 37.14-mile segment at issue here; (2) the 2.46-mile segment between milepost 145.14 near Diamond Springs and milepost 147.6 near Apex, authorized for interim trail use/railbanking in Southern Pacific Transportation Company--Abandonment Exemption--in El Dorado County, CA, Docket No. AB-12 (Sub-No. 128X) (ICC served Oct. 26, 1995);² and (3) an adjoining 13.24-mile segment between milepost 94.76, at Brighton, and milepost 108.00, at Nimbus, which has not been the subject of Board action.

By joint motion filed August 19, 1996, counsel for JPA and SPT request a fourth extension of the negotiation period, through October 4, 1996. Counsel advise that, while all substantial issues involving the subject 37.14-mile section have been resolved, details remain to be worked out between the parties in connection with the section of the line (under current freight

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² Counsel states that a similar request for extension of the negotiation period has been filed in the Sub-No. 128X proceeding.

rail use) from Brighton to Nimbus. Counsel states that the parties expect to reach a final agreement and close within the next month.

As SPT joins with JPA's extension request, the requested extension will be granted. An extension will promote the establishment of trail use and rail banking consistent with the Trails Act, 16 U.S.C. 1247(d).

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

It is ordered:

1. The request to extend the interim trail use negotiation period is granted.
2. The NITU negotiation period is extended through October 4, 1996.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary

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SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUL 27 1995

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-12 (Sub-No. 159X1)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT
EXEMPTION--SACRAMENTO AND EL DORADO COUNTIES, CA

Decided: July 19, 1995

Southern Pacific Transportation Company (SPT) filed a notice of exemption on October 22, 1993 under 49 CFR 1152 Subpart F--~~Exempt Abandonments~~ to abandon 37.14 miles of its Placerville Branch from milepost 109.00, near the Nimbus rail station, to milepost 145.14, near the Diamond Springs rail station, in Sacramento and El Dorado Counties, CA. The exemption notice was served and published in the Federal Register on November 15, 1993 (58 FR 60210). SPT's exemption was scheduled to become effective on December 12, 1993, provided no formal expression of intent to file an offer of financial assistance (OFA) was filed. On November 22, 1993, Sacramento-Placerville Transportation Corridor Joint Powers Authority (JPA) timely filed a notice of intent to file an OFA, and on February 14, 1994, submitted an offer to purchase the 37.14-mile line. By decision served February 23, 1994, JPA was found financially responsible and its offer bona fide and reasonable to initiate negotiations. The decision also provided that, either party could request the Commission to set sale terms and conditions. On March 16, 1994, JPA filed such a request and, by decision served October 20, 1994, the Commission set terms and conditions for the purchase of the line.

The October 20, 1994 decision stated that JPA must accept or reject the terms set by October 31, 1994. JPA did not accept the terms and by the provisions of the October 20, 1994 decision, the exemption became effective. JPA initiated a proceeding in the Court of Appeals to review the Commission's October 20, 1994 decision setting terms and conditions. Sacramento-Placerville Transportation Corridor Joint Powers Authority v. ICC, 9th Cir. No. 94-70899. As part of the negotiated acquisition agreement discussed below, JPA and SPT contemplate dismissal of the appeal.

In a pleading filed July 3, 1995, SPT and JPA jointly move to reopen this proceeding and request that a notice of interim trail use and rail banking (NITU) be issued for the 37.14-mile line for a period extending through October 31, 1995. SPT and JPA have reached an agreement in principle whereby JPA will acquire the entire Placerville Branch, and in particular, the track described above. JPA intends to use portions of the acquired property to extend its light rail system in the Sacramento area, and to preserve the remainder of the corridor for possible future rail use and other compatible purposes, including interim trail use, possible light rail use, and other transportation purposes.¹

SPT has stated that it has not consummated the abandonment, that it is willing to negotiate for interim trail use, and that it does not object to the issuance of a NITU. JPA has submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29. Therefore, issuance of a NITU, under the National Trails System Act, 16 U.S.C. 1247(d), is appropriate. Interim trail use/rail banking is subject to the future restoration of rail service which in any

¹ The NITU issued here is for trail use and rail banking. Subsequent use by JPA of the line for continued rail service may require Commission approval or exemption authority.

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event appears to be the parties' long-term plan for the line. While the OFA process under 49 U.S.C. 10905 and 49 CFR 1152.27 is over, the parties may nevertheless negotiate an agreement during the period of the NITU. If no agreement is reached during the pendency of the NITU, and if the NITU is not extended, SPT may fully abandon the line. See 49 CFR 1152.29(d)(1).

This action 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 notice of exemption served and published in the Federal Register on November 18, 1993, exempting the abandonment of the above-described line is modified for a period expiring October 31, 1995 to the extent necessary to implement interim trail use/rail banking.

3. If an agreement for interim trail use/rail banking is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any taxes imposed on the right-of-way.

4. If an agreement for interim trail use/rail banking is reached, interim trail use may be implemented. If no agreement is reached, SPT may fully abandon the line.

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

6. If the user intends to terminate trail use, it must send the Commission a copy of this decision and notice and request that it be vacated on a specific date.

7. This decision is effective on its service date.

By the Commission, David H. Ronschuk, Director, Office of Proceedings.

Vernon L. Williams
Secretary

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