

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1324X

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

Decided: April 23, 2024

In a decision served on October 24, 2022, the Board granted a petition under 49 U.S.C. § 10502 filed by Alabama Railroad, LLC (ARL), a Class III rail carrier, for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 47.5 miles of rail line, extending from milepost 607.73 at Flomaton, Ala., to 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). The exemption became effective on November 23, 2022. In an October 24, 2023 decision, the deadline to file a notice of consummation was extended until April 24, 2024. ARL has not filed a notice of abandonment consummation for the Line.

On April 16, 2024, ALR Trail Co., LLC (A-Trail), late-filed a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), applicable to the Line.¹ ARL joined in A-Trail's April 16 pleading. A-Trail is a recently formed subsidiary of ARL established to assume trail sponsorship until another trail sponsor is secured. (A-Trail Req. 2.)² ARL explains that it has been in discussions with interested parties about an arrangement under which ARL would donate the corridor to a willing trail sponsor, and ARL remains intent on such a corridor donation to an entity unrelated to ARL. (*Id.*)

¹ In Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that A-Trail's late-filed request will prejudice any party, it will be accepted. See R.J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 1 n.3 (STB served Apr. 17, 2020).

² The Board has held that a subsidiary of the abandoning railroad is not foreclosed from serving as a trail sponsor under the Trails Act simply by virtue of that relationship. CSX Transp.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), (STB served June 22, 2020).

Pursuant to 49 C.F.R. § 1152.29, A-Trail 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. In the same filing, ARL states that it is willing to negotiate for interim trail use on the Line with A-Trail.

Because A-Trail has complied with the requirements of 49 C.F.R. § 1152.29 and ARL is willing to negotiate for interim trail use, a NITU will be issued. ARL and A-Trail may negotiate an agreement for the right-of-way during the one-year 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), (h). If no agreement is reached within one year, ARL 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.

It is ordered:

1. This proceeding is reopened.
2. A-Trail's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted and granted. A-Trail may negotiate with ARL for interim trail use for the Line for a period of one year from the service date of this decision and notice, until April 23, 2025.
3. 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.
4. 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 3 above.
5. 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), (h).
6. 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.

7. If an agreement for interim trail use/rail banking is reached by April 23, 2025, for the right-of-way, interim trail use may be implemented. If no agreement is reached, ARL may fully abandon the Line, subject to any outstanding conditions.

8. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings