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SERVICE DATE - OCTOBER 27, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-857X

GREAT WESTERN RAILWAY OF COLORADO, LLC—ABANDONMENT EXEMPTION—  
IN WELD COUNTY, CO

Decided: October 25, 2004

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, a distance of approximately 11.7 miles, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on November 10, 2003 (68 FR 63846-47).<sup>1</sup> The exemption was scheduled to become effective on December 10, 2003. On November 14, 2003, however, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Windsor, Severance & Eaton Railroad, LLC (WS&E) to purchase all or a portion of the Eaton Subdivision. The filing of that notice of intent had the effect of automatically staying the effective date of the exemption for 10 days, until December 20, 2003.

On March 24, 2004, WS&E filed a request for permission to withdraw its notice of intent to file an OFA. By a decision and notice of interim trail use or abandonment (NITU) served on April 7, 2004: (1) the proceeding was reopened; (2) WS&E's withdrawal request was granted and the OFA process terminated; (3) the exemption became effective on the decision's service date, subject to conditions; and (4) a 180-day period was authorized for the Municipalities of Eaton, Severance, and Windsor, CO, to negotiate an interim trail use/rail banking agreement with GWRC for the right-of-way. The negotiating period under the NITU expired on October 4, 2004.

On October 18, 2004, GWRC filed a request to extend the NITU negotiating period for an additional 180 days. GWRC states that, although the negotiating period has expired, it has not consummated the abandonment of the line and the parties are continuing to negotiate an agreement.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may

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<sup>1</sup> By decision served on November 24, 2003, the proceeding was reopened and the exemption was made subject to two environmental conditions.

be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the requested extension will be granted.

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

It is ordered:

1. GWRC's request to extend the interim trail use negotiation period is granted.
2. The negotiating period under the NITU is extended to April 2, 2005.
3. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary