

SERVICE DATE – FEBRUARY 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-865X

HONEY CREEK RAILROAD, INC.–ABANDONMENT EXEMPTION–
IN HENRY COUNTY, IN

Decided: February 6, 2009

The Honey Creek Railroad, Inc. (HCR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN. Notice of the exemption was served and published in the Federal Register on August 20, 2004 (69 FR 51751). In the August 20 notice, the Board stated that, if consummation had not been effected by HCR’s filing of a notice of consummation by August 20, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision and notice of interim trail use or abandonment (NITU) served September 20, 2004, the proceeding was reopened and a 180-day period was authorized for the Indiana Trails Fund, Inc., to negotiate an interim trail use/rail banking agreement with HCR for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The trail use negotiating period expired on March 20, 2005.

The due date for filing a notice of consummation was extended several times at HCR’s request. The most recent was by decision served on February 8, 2008, which extended the time to consummate the abandonment until February 11, 2009.

On January 21, 2009, HCR filed a request to further extend the time to file its notice of consummation. HCR notes that last year the Board issued a decision in this proceeding and in Honey Creek Railroad, Inc.–Petition for Declaratory Order, STB Finance Docket No. 34869, wherein the Board addressed various issues pertaining to its jurisdiction over the subject line.² These matters arose from a referral made by the Circuit Court of Henry County, Indiana, as part of an ongoing proceeding before that court.³ HCR explains that the court case is still in progress and that the extension is needed so as to maintain the status quo in this abandonment proceeding

¹ The September 20, 2004 decision also imposed a public use condition, which expired on March 20, 2005.

² See Honey Creek Railroad, Inc.–Petition for Declaratory Order, STB Finance Docket No. 34869, et al. (STB served June 4, 2008).

³ Case No. 33C01-0506-CT-0019, Honey Creek Railroad, Inc. v. Gary L. Roberts et al.

pending litigation and/or resolution of the issues before the court. According to an attached court order dated November 25, 2008, the court has lifted its Stay of Proceedings and set a pretrial conference for January 28, 2009.

Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. Good cause has been shown and the deadline for filing the notice of consummation will be extended for a 1-year period (until February 11, 2010).

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

It is ordered:

1. HCR's request for an extension of time to file a notice of consummation is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before February 11, 2010.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary