

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1306X

BLUE RIDGE SOUTHERN RAILROAD, LLC—ABANDONMENT EXEMPTION—
IN HENDERSON AND TRANSYLVANIA COUNTIES, N.C.

Decided: June 28, 2021

On April 7, 2021, Blue Ridge Southern Railroad, L.L.C. (BRS), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 19.1-mile rail line between milepost 0.7 (approximately 0.1 miles northeast of the Main Street grade crossing) at Henderson County, and milepost 19.8 (at the end of track approximately 0.2 miles west of Lamb Creek) at Pisgah Forest near Brevard, in Transylvania County, N.C. (the Line).¹ Notice of the exemption was served and published in the Federal Register on April 27, 2021 (85 Fed. Reg. 22,295). The exemption became effective on May 27, 2021.

On June 16, 2021, BRS and Ecusta Rails2Trails L.L.C. (ER2T) late-filed a request for a notice of interim trail use or abandonment (NITU) under the National Trails Systems Act, 16 U.S.C. § 1247(d), for the Line² and advised they have entered a trails use agreement under which ER2T would assume interim trail use for the entire Line.

Because the parties' request complies with the requirements of § 1152.29 and BRS is willing to negotiate for trail use, a NITU will be issued. Although the parties indicate that they have already reached an interim trail use agreement, they will be given the full one-year period below to finalize or modify any such agreement. If they reach (or have reached) a mutually acceptable final agreement (and thus, interim trail use is established), they 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, BRS may fully abandon the Line, subject to any outstanding conditions. See 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.

¹ BRS was authorized to acquire the Line in Blue Ridge Southern Railroad—Acquisition Exemption—Norfolk Southern Railway, FD 35820 (STB served July 11, 2014). See also Watco Holdings, Inc.—Continuance in Control Exemption—Blue Ridge S. R.R., FD 35821 (STB served July 11, 2014).

² See Aban. & Discontinuance of Rail Lines & Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on April 27, 2021, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the parties to negotiate for trail use for the Line, for a period of one year from the service date of this decision and notice, until June 29, 2022.
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 June 29, 2022, for the right-of-way, interim trail use may be implemented. If no agreement is reached, BRS may fully abandon the Line, subject to any outstanding conditions.
8. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.