

SERVICE DATE – AUGUST 2, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1233 (Sub-No. 2X)

ALLEGHENY VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
ALLEGHENY COUNTY, PA.

Decided: August 2, 2024

Allegheny Valley Railroad Company (AVR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.6-mile segment of rail line known generally as the “Brilliant Branch” located in Pittsburgh and Aspinwall, Allegheny County, Pa. (the Line).¹ Notice of the exemption was served and published in the Federal Register on April 3, 2024 (89 Fed. Reg. 23,078). The exemption is scheduled to become effective on August 8, 2024.²

Two parties have filed requests for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d). On April 11, 2024, the Redevelopment Authority of Allegheny County (RAAC) filed a request for issuance of a NITU. RAAC intends to establish interim trail use/railbanking on the Line upon issuance of the abandonment exemption and further states that AVR and RAAC have executed a Purchase and Sale Agreement for the Line that sets forth the terms of interim trail use. On April 12, 2024, Pop-Up Metro, LLC (Pop-Up Metro), also filed a request for issuance of a NITU. Pop-Up Metro states that it intends to develop the right-of-way for light-rail transit and trail use. On April 15, 2024, Pop-Up Metro filed letters in support of its proposal from Bill Metzger and Charles N. Marshall.

¹ The Line consists of the following segments: (1) the Brilliant Branch, extending from milepost 0.7 in East Liberty (in the City of Pittsburgh), crossing AVR’s Allegheny Branch and the Allegheny River, passing through the Borough of Aspinwall and ending at approximately milepost 3.0, in Pittsburgh; (2) the Brilliant Branch-West Leg Wye, beginning at approximately milepost 0.0 on AVR’s Allegheny River Bridge in Aspinwall and ending at approximately milepost 0.5, in the Township of O’Hara, Pa.; and (3) a portion of the Allegheny Branch Connection in Pittsburgh beginning at approximately milepost 1.8, at the connection to the Brilliant Branch, and ending at approximately milepost 2.6, approximately 528 feet westerly of its connection to the Allegheny Branch.

² The exemption was initially scheduled to become effective on May 3, 2024, but in a decision served on May 2, 2024, the effective date was postponed until further order of the Board. On July 29, 2024, the Board established August 8, 2024, as the effective date of the exemption.

On April 19, 2024, AVR filed a letter stating that it consents to negotiate with RAAC and does not consent to negotiate with Pop-Up Metro, citing its existing contract for an interim trail use/rail banking agreement with RAAC. On April 24, 2024, Pop-Up Metro filed additional letters in support of its proposal, this time from Pittsburghers for Public Transit, Mobilify Southwestern Pennsylvania, and Professor Katherine A. Flanigan of the Carnegie Mellon University, Department of Civil & Environmental Engineering. On July 12, 2024, Pop-Up Metro filed another letter of support, this one from JJ Gumberg Co.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on April 8, 2024, recommending that two conditions be imposed on any decision granting abandonment authority. OEA explained that the U.S. Army Corps of Engineers, Pittsburgh District (USACE), stated that a Pennsylvania state permit may be required if placement of material is required alongside the railroad tracks. USACE also stated that "if no work, salvage, removal, or otherwise, is to be conducted on or adjacent to the bridge crossing the Allegheny River, then no Section 10 permit or review is required." Accordingly, OEA recommended a condition requiring AVR to consult with USACE prior to the commencement of any abandonment-related salvage activities.

OEA also stated that it received a comment from the Pennsylvania Department of Environmental Protection (PDEP) regarding the section of the Line that utilizes the bridge over the Allegheny River and the potential need for a state permit for abandonment of water obstructions and encroachments. Accordingly, OEA recommended a condition requiring AVR to consult with PDEP prior to commencement of any abandonment-related activities.

Comments on the Draft EA were due by April 23, 2024. OEA served its Final Environmental Assessment (Final EA) on April 29, 2024, indicating that one new comment was received. The Final EA states that on April 23, 2024, PDEP submitted a comment requesting modifications to the second condition recommended in the Draft EA. PDEP stated that its previous comment regarding potential permitting extends to smaller watercourses and wetlands. Thus, PDEP suggested that the second condition be modified to include smaller watercourses and wetlands and to require AVR to comply with all applicable permitting requirements. Accordingly, OEA is recommending modifying the second condition recommended in the Draft EA to require AVR to consult with PDEP regarding potential impacts to any watercourse or wetland, including the Allegheny River, and to comply with all reasonable, applicable permitting requirements. OEA also states that, upon further review, it believes the second condition recommended in the Draft EA should be modified to include the word "salvage" before the word "activities," as it was inadvertently omitted. OEA continues to recommend that the first condition recommended in the Draft EA be imposed. Based on OEA's analysis and recommendation, the conditions recommended in the Final EA will be imposed.

Interim Trail Use. RAAC's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and AVR has indicated it is willing to negotiate an agreement for interim trail use with RAAC. Therefore, a NITU will be issued. RAAC and AVR may negotiate an agreement 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, AVR 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.

Pop-Up Metro's request for a NITU, however, will be denied. The interim trail use program is voluntary and consensual between the railroad and the trail sponsor. See Rail Abans.—Use of Rts.-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Although Pop-Up Metro's request also complies with 49 C.F.R. § 1152.29, AVR does not agree to negotiate with Pop-Up Metro. See § 1152.29(d)(1) ("If . . . a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a [NITU]"); see also Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988).

This decision, and the proposed abandonment if implemented as conditioned, 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 served and published in the Federal Register on April 3, 2024, 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 AVR and RAAC to negotiate for interim trail use for the rail line, for a period of one year from the service date of this decision and notice, until August 2, 2025.
3. The abandonment is also subject to the following conditions:³
 - (a) Prior to commencement of any abandonment-related salvage activities, AVR shall consult with the U.S. Army Corps of Engineers regarding potential impacts to waters of the United States, including wetlands, and shall comply with its reasonable requirements.
 - (b) Prior to commencement of any abandonment-related salvage activities, AVR shall consult with the Pennsylvania Department of Environmental Protection regarding potential impacts to any watercourse or wetland, including the Allegheny River, and shall comply with all reasonable, applicable permitting requirements.
4. 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

³ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with these conditions would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

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.

5. 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 4 above.

6. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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).

7. If interim trail use/rail banking 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/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by August 2, 2025, interim trail/rail banking use may be implemented. If no agreement is reached, AVR may fully abandon the Line, subject to any outstanding conditions.

9. Pop-Up Metro's request for a NITU is denied.

10. This decision and notice is effective on its service date.

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