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SERVICE DATE – JUNE 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 625X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–  
IN PRESTON COUNTY, WV

Decided: May 30, 2008

By decision and notice of interim trail use or abandonment (NITU) served on April 9, 2004 (April 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc. (CSXT) of a 14.3-mile line of railroad extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 14.3 near Albright in Preston County, WV, subject to trail use, public use, environmental, and standard employee protective conditions.

The April 2004 decision authorized Friends of the Cheat (Friends) to negotiate with CSXT for interim trail use/rail banking until October 6, 2004, for the 14.3-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By decision served on October 13, 2004, the NITU negotiating period was extended until April 6, 2005, and the time for CSXT to file its notice of consummation was extended until June 6, 2005. After the extension of the NITU negotiating period, CSXT and Friends could not reach an agreement. CSXT subsequently submitted a notice of consummation to the Board on June 3, 2005.

By letter filed on October 12, 2005, CSXT stated that it had inadvertently sent the notice of consummation in this proceeding to the Board before complying with all of the conditions imposed in the April 2004 decision. In that filing, CSXT requested that the Board allow it to retract the consummation letter so that CSXT properly could comply with the historic preservation condition, which remained unsatisfied, and asked that the Board indicate that the abandonment had not been consummated. By decision served on October 28, 2005, CSXT's request to retract the consummation letter was granted, and it was ordered that the line remained subject to the Board's jurisdiction.<sup>1</sup>

By decisions served on December 8, 2005, May 26, 2006, December 13, 2006, June 8,

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<sup>1</sup> By decision served on January 26, 2006, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the historic preservation condition that had been imposed in the April 2004 decision was removed.

2007, and December 3, 2007, the negotiating period under the NITU was extended to May 16, 2008, for a 9.78-mile portion of the line extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 9.78 at Camp Dawson, in Preston County, WV.<sup>2</sup> The December 2007 decision also granted a request from CSXT to extend the consummation notice filing deadline until July 15, 2008.

On May 15, 2008, CSXT filed a request for an additional 180-day extension of the NITU negotiating period until November 12, 2008. CSXT states that it has not consummated the abandonment of the 9.78-mile portion of the line, has been unable to finalize negotiations with Friends, and desires to continue to negotiate with Friends for interim trail use/rail banking for that portion of the line. According to CSXT, the prospects for reaching an agreement are highly favorable. Additionally, CSXT requests an extension of the consummation notice filing deadline until January 11, 2009.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment for that portion of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances described in this decision, 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). Accordingly, the NITU negotiating period will be extended for that portion of the line extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 9.78 at Camp Dawson, in Preston County, WV, for an additional 180 days, from May 16, 2008, until November 12, 2008, and the deadline for CSXT's filing of a notice of consummation will be extended to January 11, 2009. Given the length of time parties have had to negotiate a trail use agreement, however, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The requests by CSXT for an additional 180-day NITU negotiating period and for an extension of time to exercise abandonment authority for the above-described portion of the line are granted.
2. The negotiating period under the NITU is extended to November 12, 2008.

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<sup>2</sup> In a pleading filed on November 22, 2006, CSXT stated that it had consummated the abandonment for the remaining portion of the line, extending between milepost BAJ 9.78 and milepost BAJ 14.3.

3. The authority to abandon must be exercised on or before January 11, 2009.
4. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary