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SERVICE DATE – JANUARY 23, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: January 22, 2008

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY.¹

The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was extended by decisions served on June 30, 2005, January 5, 2006, July 6, 2006, January 4, 2007, and July 30, 2007, with the latest extension expiring on December 31, 2007. The July 30, 2007 decision also extended the deadline for filing a notice of consummation until February 29, 2008.²

By pleading filed December 31, 2007, the Kentucky Rails to Trails Council (KRTC)³ states that, on December 17, 2007, Big Sandy Area Development District (Big Sandy ADD)⁴

¹ Earlier decisions in this proceeding have embraced the discontinuance docket, STB Docket No. AB-875X, R.J. Corman Railroad Company/Bardstown Line—Discontinuance of Service Exemption—in Johnson, Magoffin and Breathitt Counties, KY.

² The January 4, 2007 decision had extended the deadline for filing a notice of consummation until August 14, 2007.

³ KRTC is a non profit organization whose mission is to promote and develop rail trails in Kentucky.

requested that KRTC replace it as the interim trail use proponent with respect to the line. KRTC requests that the Board do so and authorize a new negotiation period for 180 days. KRTC adds that Corman has authorized it to state that Corman consents to the request.

KRTC has submitted a copy of the extant NITU and its statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29. KRTC also acknowledges that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. Accordingly, the request will be granted.

This decision 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 NITU served on December 23, 2004, is vacated.
3. A replacement NITU applicable to KRTC as interim trail user is issued for a period of 180 days from the service date of this decision and notice (until July 21, 2008).
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

⁴ By letter filed on January 4, 2006, Corman explained that the Counties had arranged for Big Sandy ADD, an organization of local governmental officials and citizens, to pursue this rails-to-trails project on their behalf. They added that, if the parties are able to reach a trail use agreement, the Counties would acquire and develop the right-of-way and assume financial responsibility for the trail.

7. This decision and notice is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary