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SERVICE DATE - MARCH 10, 1998  
SURFACE TRANSPORTATION BOARD  
DECISION

STB Docket No. AB-55 (Sub-No. 547X)

CSX TRANSPORTATION, INC.--ABANDONMENT  
EXEMPTION--IN MUSKEGON COUNTY, MI

Decided: March 6, 1998

In a decision and notice of interim trail use or abandonment (NITU) served on August 14, 1997, a 180-day period was authorized for the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for a 10.13-mile portion of its Detroit Division, Montague Subdivision, extending from milepost 62.12 at Berry to milepost 72.25 at the end of track at Montague, including a 3.5-mile industrial lead track at Montague, a total of 13.63 miles, in Muskegon County, MI. The trail use negotiating period was scheduled to expire on February 10, 1998. MDNR also was granted a 180-day public use condition under 49 U.S.C. 10905, which will expire on March 12, 1998. Notwithstanding the NITU and public use conditions that remained in effect, on October 7, 1997, CSXT filed a letter advising that "CSX Transportation, Inc. abandoned the line of railroad effective September 25, 1997." However, the trail use and public use conditions imposed in this proceeding are regulatory barriers to consummation and, accordingly, CSXT's letter cannot, alone, provide valid notice that this line has been fully abandoned. Accordingly, the letter filed October 7, 1997, will be rejected. If CSXT had wanted to abandon during the Trails Act negotiating period, it would have had to have obtained an order terminating that period. Only then would the impediment to abandonment have been removed, making the filing of a notice of consummation in order.<sup>1</sup>

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<sup>1</sup> The Board's regulations adopted in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), include a provision at 49 CFR 1152.29(e)(2), that is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.9(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed

(continued...)

Moreover, by letter-requests filed February 3 and 10, 1998, both MDNR and CSXT, respectively, seek a 180-day extension of the NITU negotiation period, stating that negotiations are ongoing but that additional time is needed to complete an agreement.

Because an extension of the negotiation period was requested while the NITU was in effect, and the parties agree on the necessity for the extension, the request will be granted. An extension will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), See Birt v. STB, 90 F.3d 580, 588-590 (D.C. Cir.), reh'g denied, 98 F.3d 644 (D.C. Cir. 1996). Accordingly, the NITU negotiation period will be extended until August 9, 1998.

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

It is ordered:

1. The letter filed October 7, 1997, by CSXT in this proceeding is rejected.
2. MDNR's and CSXT's requests to extend the NITU negotiation period are granted.
3. The NITU negotiation period is extended until August 9, 1998.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>1</sup>(...continued)  
within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions) . . . .