

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PRESTON COUNTY, W. VA.

Decided: April 25, 2014

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, W. Va. The Board granted the exemption subject to trail use, public use, environmental use, and standard employee protective conditions.

The April 2004 decision authorized a 180-day period for 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 § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. 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 determined that the line remained subject to the Board's jurisdiction.¹

¹ By decision served on January 26, 2006, the proceeding was reopened at the request of the Board's then Section of Environmental Analysis, and the historic preservation condition that had been imposed in the April 2004 decision was removed. The remaining environmental condition involves a notification requirement that relates to salvage, and, while still in effect, it is not a barrier to consummating the abandonment.

By a series of decisions, the negotiating period under the NITU was extended to April 20, 2013, 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, W. Va.²

In a decision served on February 12, 2013, the NITU served on April 9, 2004, was vacated and a replacement NITU was issued authorizing: (a) Greer Industries (Greer) as the new interim trail sponsor for a 3.0-mile portion of the line from milepost BAJ 0.0 to milepost BAJ 3.0, and (b) West Virginia State Rail Authority (West Virginia) as the new interim trail sponsor for the remaining 6.78-mile portion of the line from milepost BAJ 3.0 to milepost BAJ 9.78, in Preston County, W. Va. The decision stated that if an agreement for interim trail use/rail banking was reached by August 11, 2013, the parties to that agreement shall jointly notify the Board within ten days that an agreement had been reached, 49 C.F.R. § 1152.29(d)(2) and (h), and interim trail use may be implemented. If no agreement was reached by that time, CSXT may fully abandon the line, provided the conditions imposed in the April 2004 decision had been met. No agreement between the parties was reached by the end of the August 11, 2013, negotiating period, therefore, at the request of both trail sponsors, the NITU negotiating period was extended until February 7, 2014, by decisions served on August 23, 2013.

In a letter filed on February 10, 2014, West Virginia has requested an extension of time of the negotiation period for 180 days from February 7, 2014, to August 6, 2014, for the 6.78-mile portion of the line from milepost BAJ 3.0 to milepost BAJ 9.78, in Preston County, W. Va.

In a letter filed on February 28, 2014, CSXT states that it agrees to the 180-day extension to continue to negotiate with West Virginia for interim trail use/rail banking with respect to the 6.78-mile portion of the line. In its letter, CSXT advises that the sale to Greer of the 3.0-mile portion of the line between milepost BAJ 0.0 at Rowlesburg, W. Va., and milepost BAJ 3.0 at Manheim, W. Va., was closed on December 13, 2013, and that an extension is no longer needed for this portion of the line. Therefore, West Virginia's request will be granted and a replacement NITU will be issued.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations for a portion of the line, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, 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. Mo. Pac. R.R.,

² 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 See Rail Abans.–Use of Rights-of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period for the portion of the line between milepost BAJ 3.0 and milepost BAJ 9.78 will be extended for 180 days from February 7, 2014, until August 6, 2014. 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) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012).

This decision and notice 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 in this proceeding on February 12, 2013, is vacated.
3. A replacement NITU applicable to West Virginia for the portion of the line between milepost BAJ 3.0 and milepost BAJ 9.78 is issued.
4. The request by West Virginia for a 180-day NITU negotiating period is granted.
5. The negotiating period is extended from February 7, 2014, to August 6, 2014.
6. If an agreement for interim trail use/rail banking is reached for the portion of the line between milepost BAJ 3.0 and milepost BAJ 9.78, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R § 1152.29(d)(2) and (h).
7. This decision and notice is effective on its date of service.

By the Board, Rachel D. Director, Office of Proceedings.