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SERVICE DATE - JULY 29, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 635X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN GRATIOT COUNTY, MI

Decided: July 28, 2003

CSX Transportation, Inc. (CSXT) and Mid-Michigan Railroad, Inc. (MMR) (collectively, applicants), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuance of Service for CSXT to abandon and MMR to discontinue service over approximately 5.5 miles of railroad from milepost CBE-40.00 at Alma, to milepost CBE-45.5 at Elwell, in Gratiot County, MI. Notice of the exemption was served and published in the Federal Register (68 FR 38420) on June 27, 2003.¹ The exemption is scheduled to become effective on July 29, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 3, 2003. In the EA, SEA stated that: (1) the State of Michigan Department of History, Arts and Libraries (Michigan SHPO) has not yet completed its assessment of the potential impact of this project on historic resources; (2) the National Geodetic Survey (NGS) has advised that seven geodetic markers have been identified that may be affected by the proposed abandonment; and (3) the State of Michigan Department of Environmental Quality (MIDEQ) has indicated that under Michigan's Part 301, Inland Lakes and Streams and Part 303, Wetlands Protection, of the National Resources and Environmental Protection Act, 1994 PA 451, as amended, a permit would be required if any dredge or fill is determined to potentially occur in a regulated wetland or if any temporary haul roads or streams crossings are determined necessary.

SEA therefore recommends that the following conditions be imposed on any decision granting abandonment authority: (1) that applicants shall retain their interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way (ROW) that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) that applicants provide NGS with 90 days' notice prior to salvage activities in order to plan the relocation of the seven geodetic station markers; and (3) that applicants shall, prior to commencement

¹ The notice served June 27, 2003, embraced the STB Docket No. AB-364 (Sub-No. 9X) CSX Transportation, Inc.–Discontinuance of Service Exemption–in Gratiot County, MI.

of any salvage activities on this project, contact MIDEQ concerning possible impacts on water quality and any water quality permitting requirements.

Comments to the EA were due by July 18, 2003. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

SEA also indicated that the ROW may be suitable for public use following abandonment. On July 8, 2003, the Friends of Fred Meijer Heartland Trail (Heartland Trail) late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with applicants for acquisition of the ROW for use as a recreational trail.² Heartland Trails requests that applicants be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels for a 180-day period from the effective date of the abandonment. Heartland Trails states that this time is needed because they have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the applicants. Heartland Trails submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer of or use of, and for the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reactivation for rail service. In a response submitted on July 17, 2003, applicants indicated their willingness to negotiate with Heartland Trails for interim trail use.

Because Heartland Trail's request complies with the requirements of 49 CFR 1152.29 and applicants are willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2

² The June 27 notice provided that trail use/rail banking requests had to be filed by July 7, 2003. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that Heartland Trails' the City's late-filed requests will prejudice any party, they will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Heartland Trails has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the ROW, CSXT must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with Heartland Trails, but may engage in negotiations with other interested persons.

As conditioned, 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. Upon reconsideration, the exemption for abandonment of the line described above is subject to the conditions that applicants shall: (1) retain their interest in and take no steps to alter the historic integrity of all sites and structures on the ROW that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) provide NGS with 90 days' notice prior to salvage activities in order to plan their relocation of seven geodatic station markers that may be affected by the abandonment; and (3) prior to commencement of any salvage activities on this project, contact MIDEQ concerning possible impacts on water quality and any water quality permitting requirements
3. The notice of exemption served and published in the Federal Register on June 27, 2003, exempting abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that applicants be barred from

removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels for a period of 180 days after the July 29, 2003 effective date (until January 25, 2004), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.

5. If an interim trail use/rail banking agreement is reached, it must require the trail user 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 (if the user is immune from liability, 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 ROW.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

7. If interim trail use is implemented, and subsequently the 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.

8. If an agreement for interim trail use/rail banking is reached by January 25, 2004, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

9. This decision is effective on its service date.

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

Vernon A. Williams
Secretary