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SERVICE DATE - JUNE 28, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 648X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MUHLENBERG
AND OHIO COUNTIES, KY

Decided: June 25, 2004

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a line of railroad in its Southern Region, Nashville Division, Henderson Subdivision, between Moorman (milepost OHE 118.8) and Wilson Station (milepost OHE 114.2), a distance of 4.6 miles, in Muhlenberg and Ohio Counties, KY. Notice of the exemption was served and published in the Federal Register on May 28, 2004 (69 FR 30747-48). The exemption is scheduled to become effective on June 29, 2004.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding that was served on June 4, 2004, and requested comments by June 21, 2004. In the EA, SEA recommends that the following conditions be imposed on any decision granting abandonment authority. First, the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified three geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers. Second, the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), states that prime farmland exists in the area of the proposed abandonment in Muhlenberg County. CSXT states that it has not received a response from the NRCS office in Hartford, Ohio County. Therefore, SEA recommends that CSXT consult with the appropriate NRCS office for the counties of Muhlenberg and Ohio prior to salvage activities. Third, the Department of the Army, Army Engineering District, Louisville Corps of Engineers (USACE - Louisville District), states that part of the proposed abandonment may include crossing of the Green River. All bridge projects over navigable waters fall under the jurisdiction of the U.S. Coast Guard (USCG) and section 9 of the Rivers and Harbors Act of 1899. USACE recommends that, if any work is proposed on this actual bridge crossing, CSXT should coordinate with USCG, Bridge Branch District #2, St. Louis, MO, to determine if any permitting or notification would be required. Accordingly, SEA recommends that CSXT consult with USCG prior to salvage activities. Finally, according to CSXT, there is one CSXT-owned structure on the line that is 50 years old or older that may be eligible for listing in the National Register of Historic Places. Therefore, SEA recommends that CSXT be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way 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 (NHPA).

No comments to the EA were received by the June 21, 2004 due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

SEA also indicated in the EA that the right-of-way may be suitable for other public use following abandonment. On June 7, 2004, the Muhlenberg County Fiscal Court (the County) filed a request under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way, and for a public use condition under 49 U.S.C. 10905, to negotiate with CSXT for acquisition of the right-of-way for use as a trail. In a letter filed on June 9, 2004, the County requests that CSXT be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and 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 exemption. The County states that this time is needed to negotiate with CSXT. The County also submitted a statement of willingness to assume financial responsibility for the 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on June 9, 2004, CSXT indicates that it is willing to negotiate with the County for interim trail use.

Because the County's request complies with the requirements of 49 CFR 1152.29 and CSXT is 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, provided the conditions imposed in this decision and notice are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way 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 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). Because the County has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 29, 2004 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 right-of-way, CSXT must keep the remaining right-of-way 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 right-of-way 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 the County, but may engage in negotiations with other interested persons.

As conditioned, this action 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 notice served and published in the Federal Register on May 28, 2004, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the June 29, 2004 effective date of the exemption (until December 26, 2004), and subject to the conditions that CSXT shall: (1) consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (2) consult with the appropriate office of NRCS for the counties of Muhlenberg and Ohio prior to salvage activities; (3) consult with USCG prior to salvage activities; and (4) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. CSXT shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before December 26, 2004, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. 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 (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 user's continuing to meet the financial obligations for the right-of-way.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by December 26, 2004, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary