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SERVICE DATE – FEBRUARY 11, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 684X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN SHELBY
COUNTY, TENN.

Decided: February 10, 2015

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, Tenn. (the Line). Notice of the exemption was served and published in the Federal Register on September 27, 2007 (72 Fed. Reg. 54,977). The exemption became effective on October 27, 2007.

By decision and notice of interim trail use or abandonment (NITU) served on October 26, 2007, the proceeding was reopened and a 180-day period was authorized for the Memphis Community Connector (MCC) to negotiate an interim trail use/rail banking agreement with CSXT for the Line. By decision served on April 30, 2008, the NITU was modified to include Shelby County, Tenn. (Shelby County), as an additional party to MCC's trail use negotiations under the NITU. At the request of MCC, Shelby County, and CSXT (the parties), by decision served on August 21, 2008, separate NITU negotiating periods were established for 2 segments of the Line: (1) the segment extending between milepost ONI 224 and milepost ONI 216.92 (Memphis Segment), and (2) the segment extending between milepost ONI 210.66 and milepost ONI 216.92 (Cordova Segment). By letter filed on November 30, 2009, CSXT informed the Board that the parties had entered into an agreement for transfer of the Memphis Segment to MCC and had closed that transaction. By a series of decisions, the last of which was served on May 30, 2014, the NITU negotiating period for the Cordova Segment was extended until December 31, 2014.

In a letter filed on December 23, 2014, the parties state that on December 19, 2014, they completed a sale for a portion of the Cordova Segment between milepost ONI 216.92 and milepost ONI 212.79. The parties also state that they continue to negotiate over the final section of the Cordova Segment, between milepost ONI 212.79 and milepost ONI 210.66. The parties believe that they can complete those negotiations within one year. Therefore, the parties request a one-year extension of the NITU negotiating period for the remainder of the Cordova Segment until December 31, 2015. The parties' 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.¹ 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., 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 ONI 212.79 and milepost ONI 210.66 will be extended until December 31, 2015.² 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).

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 October 26, 2007, is vacated.
3. A replacement NITU applicable to MCC and Shelby County for the portion of the Line between milepost ONI 212.79 and milepost ONI 210.66 is issued.
4. The parties' request for a NITU negotiating period until December 31, 2015, is granted.
5. If an agreement for interim trail use/rail banking is reached for the portion of the Line between milepost ONI 212.79 and milepost ONI 210.66, the parties shall jointly notify the Board within 10 days that an agreement has been reached.
6. This decision and notice is effective on its date of service.

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

¹ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C. 2d 152, 157-58 (1987).

² A deadline of December 31, 2015, provides a negotiating period that is longer than the typical 180 days, but the parties have concluded a sale of a portion of the Cordova Segment and wish to continue negotiations for the remaining portion, and they believe those negotiations can be concluded by then. Under the circumstances, the longer period is appropriate.