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SERVICE DATE—NOVEMBER 1, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: October 31, 2011

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., subject to trail use, public use, environmental, and standard employee protective conditions. In this decision, the Board is granting the request by Friends of the Cheat (Friends) to extend the interim trail use/rail banking negotiating period, thereby also extending the time for CSXT to exercise its abandonment authority.

The April 2004 decision authorized Friends to negotiate with CSXT for interim trail use/rail banking until October 6, 2004, for the 14.3-mile line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). 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 ordered 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.

By a series of decisions, with the most recent decision served on May 31, 2011, the negotiating period under the NITU was extended to October 28, 2011, 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 accordance with 49 C.F.R. § 1152.29(e)(2), the time for CSXT to consummate the abandonment and file the notice of consummation was automatically extended until December 27, 2011.

By letter filed on October 12, 2011, Friends request an additional 180-day extension of the NITU negotiating period. Friends indicate that CSXT has expressed its willingness to continue negotiations for interim trail use/rail banking for that portion of the line. Friends state that the parties have developed a draft purchase sale agreement and seek to close the agreement soon. By letter filed on October 14, 2011, CSXT concurs in the request to extend the negotiating period for 180 days until April 25, 2012.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted.³ See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for that portion of the line extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 9.78 at Camp Dawson for an additional 180 days, from October 28, 2011, to April 25, 2012.⁴

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

It is ordered:

1. The request by Friends for an additional 180-day NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to April 25, 2012.

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).

⁴ CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CSXT's notice of consummation will be due no later than 60 days thereafter, June 24, 2012. See 49 C.F.R. § 1152.29(e)(2).

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

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