

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 401)

CSX TRANSPORTATION, INC.—ABANDONMENT—BETWEEN DELPHI AND  
FRANKFORT, IND.

Decided: September 23, 2015

This decision reopens the proceeding and issues a certificate of interim trail use or abandonment (CITU) under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29.

BACKGROUND

By certificate and decision served on January 3, 1992, and published in the Federal Register on January 8, 1992, the Board's predecessor, the Interstate Commerce Commission (ICC), granted authority under 49 U.S.C. § 10903 for CSX Transportation, Inc. (CSXT) to abandon its 25.28-mile line of railroad between milepost QA-112.22 at Delphi and milepost QA-137.50 at Frankfort, in Carroll and Clinton Counties, Ind. (the Line). The January 1992 decision also imposed a historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA).<sup>1</sup> That condition, recommended by the ICC's Section of Energy and Environment (SEE),<sup>2</sup> required CSXT to retain its interest in and take no steps to alter the historic integrity of bridges 113.0 and 121.5 spanning Deer Creek and Wildcat Creek, respectively, and the Depot at Frankfort until the Section 106 process of the NHPA is completed. Following the conclusion of the offer of financial assistance (OFA) process (under which no OFA purchase occurred), the January 3, 1992 decision and certificate became effective on March 1, 1992.

In 2012, OEA issued a Supplemental Final Environmental Assessment stating that CSXT had been contacted by several groups with concerns about the Wildcat Creek Bridge at milepost 121.5. According to OEA, the Indiana Department of Transportation and the U.S. Army Corps of Engineers requested that CSXT remove the Wildcat Creek Bridge because it had become a danger to navigation and public safety. OEA stated that CSXT also believed that the Wildcat Creek Bridge had become a liability and needed to be dismantled.

After consulting with the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO), OEA determined that the demolition or dismantling of

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<sup>1</sup> NHPA Section 106, formerly 16 U.S.C. § 470f, is now codified at 54 U.S.C. § 306108.

<sup>2</sup> SEE is now the Office of Environmental Analysis (OEA).

the bridge would be an adverse effect to historic property. As a result, OEA consulted with the SHPO, CSXT, and interested local historic groups to develop a Memorandum of Agreement (MOA), pursuant to the regulations implementing Section 106, stipulating a process for addressing adverse effects to the Wildcat Creek Bridge. In the MOA, CSXT agreed to, among other things, mitigate the loss of the Wildcat Creek Bridge by transferring ownership of the other historic bridge on the Line—the Deer Creek Bridge at milepost 113.0—and the 0.43-mile northern approach to that bridge to a qualified trails group for \$1.00. The MOA was executed on July 9, 2012.

OEA's Supplemental Final Environmental Assessment indicated that the filing of the MOA with the Advisory Council on Historic Preservation completed the Board's compliance responsibilities under Section 106 for the Wildcat Creek Bridge. OEA therefore recommended that the Section 106 condition imposed in the January 1992 decision be modified to remove the Wildcat Creek Bridge. Accordingly, by decision served September 24, 2012, the Board modified the Section 106 condition to include just the Deer Creek Bridge.<sup>3</sup>

Interim Trail Use. On July 13, 2015, Carroll County Wabash & Erie Canal, Inc. (CCW&EC) indicated its interest in seeking interim trail use/rail banking under 16 U.S.C. § 1247(d) by filing a Statement of Willingness to Assume Financial Responsibility under the Board's interim trail use regulations at 49 C.F.R. § 1152.29 for the 0.60-mile portion of the Line between milepost 0QA 112.6 and milepost 0QA 113.2—the portion of the Line that includes the Deer Creek Bridge at milepost 113.0. CCW&EC indicates that it is willing to assume full responsibility for managing the right-of-way, any legal liability arising out of the transfer or use of the right-of-way, and the payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 C.F.R. § 1152.29(a). CCW&EC also acknowledges that the use of the right-of-way for trail purposes is subject to the user's continuing to meet the responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In response, CSXT states that it agrees to negotiate with CCW&EC for interim trail use/rail banking.

Because CSXT agrees to negotiate with CCW&EC and CCW&EC's Statement of Willingness complies with the requirements of 49 C.F.R. § 1152.29, a CITU will be issued.<sup>4</sup> The

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<sup>3</sup> OEA also recommended removing from the Section 106 condition the other previously-identified historic structure (the Depot at Frankfurt) because it had been burned by vandals and razed, and the September 24, 2012 decision did so.

<sup>4</sup> In Abandonment & Discontinuance Of Rail Lines & Transportation 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 late-filed interim trail use requests when good cause is shown. Here, it is appropriate to accept CCW&EC's submission because the Board still has jurisdiction (as the Section 106 condition for the Deer Creek Bridge remains in effect), a CITU would facilitate the transfer of the Deer Creek Bridge as contemplated under the MOA, and CSXT has agreed to negotiate with CCW&EC.

parties may negotiate an agreement during the 180-day period prescribed below. 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(c)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line, subject to the existing conditions, including the Section 106 condition as modified in the September 24, 2012 decision. 49 C.F.R. § 1152.29(c)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the certificate and decision served on January 3, 1992 and published in the Federal Register on January 8, 1992, authorizing the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking with respect to the segment between milepost 0QA 112.6 and milepost 0QA 113.2 as set forth below to permit CCW&EC to negotiate with CSXT for trail use for a period of 180 days from the service date of this decision and notice (until March 22, 2016).
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.
5. 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).
6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, 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 March 22, 2016 for the right-of-way, interim trail use may be implemented. If no agreement is reached CSXT may fully

abandon the Line, subject to the existing conditions, including the Section 106 condition as modified in the September 24, 2012 decision.

8. This decision and notice is effective on its service date.

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