

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 675X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN  
WARE COUNTY, GA.

Decided: April 23, 2010

On February 1, 2008, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period, until July 31, 2008, for the City of Waycross, GA. (Waycross), to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for a 1.08-mile rail line on CSXT's Southern Region, Jacksonville Division, Fitzgerald Subdivision, between mileposts AP 588.84 and AP 587.76 in Waycross, Ware County, GA.<sup>1</sup> The negotiating period under the NITU was subsequently extended, with the latest extension expiring on March 27, 2010.

By letter filed on March 22, 2010, Waycross requests a 180-day extension of the NITU negotiating period. Waycross states that the parties continue to negotiate for interim trail use/rail banking. In a response filed on March 29, 2010, CSXT states that it concurs with the extension request, has not consummated the abandonment, has been unable to finalize negotiations with Waycross, and desires to continue to negotiate for interim trail use/rail banking with Waycross. CSXT also requests an extension of the time until November 22, 2010, to file its notice of consummation.<sup>2</sup>

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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.

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<sup>1</sup> The February 1 decision authorized the exemption subject to a self-executing environmental condition requiring CSXT to consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

<sup>2</sup> Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. Because the same provision permits the railroad to file a notice of consummation within 60 days after expiration of a legal or regulatory barrier, such as a trail use condition, CSXT does not need a separate extension of the deadline for filing a notice of consummation. CSXT's request for that extension will therefore be dismissed as moot.

Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for 180 days, until September 23, 2010. The time to consummate the abandonment and file a notice of consummation will be extended until November 22, 2010 pursuant to 49 C.F.R. § 1152.29(e)(2).

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

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The request to extend the time to consummate the abandonment and file a notice of consummation is dismissed as moot.
3. The negotiating period under the NITU is extended to September 23, 2010.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before November 22, 2010.
5. This decision is effective on its service date.

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