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SERVICE DATE – MAY 28, 2010

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 27, 2010

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 requests by Friends of the Cheat (Friends) to extend the interim trail use/rail banking negotiating period and by CSXT to extend the time for it 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 Section of Environmental Analysis, and the historic preservation condition that had been imposed in the April 2004 decision was removed.

By several other decisions, with the most recent decision served on November 23, 2009, the negotiating period under the NITU was extended to May 6, 2010, 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 The November 23, 2009 decision also granted a request from CSXT to extend the consummation notice filing deadline until July 5, 2010.

On May 18, 2010, Friends submitted a request for an additional 180-day extension of the NITU negotiating period. Friends indicated that CSXT has expressed its willingness to continue negotiations for interim trail use/rail banking for that portion of the line. Friends stated that it is evaluating past appraisals performed on this line of railroad and is exploring the need for a new appraisal.

On May 24, 2010, CSXT concurred in the request to extend the negotiating period for 180 days to November 2, 2010. Additionally, CSXT requested an extension of the consummation notice filing deadline until January 1, 2011.

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 Village v. Missouri 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 May 6, 2010, to November 2, 2010, and the deadline for CSXT's consummating the abandonment and filing a notice of consummation will be extended from July 5, 2010, to January 1, 2011. Given the length of time the parties have had to negotiate a trail use agreement, however, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The requests by Friends for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise its abandonment authority and file its notice of consummation for the above-described portion of the line are granted.
2. The negotiating period under the NITU is extended to November 2, 2010.

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 Aban.—Use of Rights-of-Way as Trails—Supp. Trails Act Proc., 4 I.C.C.2d 152, 157-58 (1987).

3. The authority to abandon must be exercised, and the notice of consummation must be filed, by CSXT on or before January 1, 2011.

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

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