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SERVICE DATE – MAY 1, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 741X)

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

Decided: May 1, 2015

This decision reopens the proceeding to issue a notice of interim trail use and a public use condition and makes, pursuant to 49 C.F.R. § 1011.7(a)(2)(ix), a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g).

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 15.12-mile line of railroad on its Southern Region, Huntington East Division, Big Marsh Fork Subdivision (former Jarrolds Valley Subdivision) (the Line). The Line extends between mileposts CLP 0.0 and CLP 15.12 near Whitesville, in Raleigh County, W.Va. Notice of the exemption was served and published in the Federal Register on April 2, 2015 (80 Fed. Reg. 17,822). The exemption is scheduled to become effective on May 2, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on April 8, 2015,¹ solicited comments, and issued a Final EA on April 28, 2015. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On April 15, 2015, New River Gorge Regional Development Authority (New River Development) filed a request, which it clarified on April 21, 2015, for the issuance of a notice of interim trail use (NITU) for a 180-day period to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. New River Development has submitted a statement of willingness to assume full responsibility for the management of, for any legal

¹ On April 10, 2015, a corrected EA was served correcting a typographical error in the date comments were due.

liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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. New River Development 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 a response filed on April 20, 2015, CSXT states that it agrees to negotiate for interim trail use/rail banking.

Because CSXT agrees to New River Development's request for a NITU and New River Development's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The 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(d)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line. 49 C.F.R. § 1152.29(d)(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.

New River Development also requests imposition of a 120-day public use condition under 49 U.S.C. § 10905 for the Line. It asks that CSXT be prohibited from disposing of the corridor in any manner, including the rails and ballast, except for public use on reasonable terms. New River Development explains that the rail corridor may be transitioned into a draisine recreational corridor that would require usage of the existing rails, ties, and ballast.² It claims that the 120-day period is needed to begin negotiations with CSXT and to fully explore the feasibility of a draisine route instead of a traditional trail.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

² According to New River Development, a “draisine” is a light auxiliary vehicle used on rails.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because New River Development has satisfied these requirements, the 120-day public use condition it requests will be imposed, requiring CSXT to keep intact the right-of-way, including bridges, trestles, culverts, tunnels, rails, ties, and ballast, commencing from the May 2, 2015 effective date of the exemption.³

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on August 30, 2015 (120 days from the May 2, 2015 effective date of the exemption), and the trail use negotiation period will expire on October 28, 2015 (180 days from the service date of this decision and notice). CSXT must keep the remaining section intact for the running of the remainder of the public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with New River Development, but may engage in negotiations with other interested persons.

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. Upon reconsideration, the April 2, 2015 notice exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit New River Development to negotiate with CSXT for trail use for a period of 180 days from the service date of this decision and notice (until October 28,

³ Because 49 U.S.C. § 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, should a resolution not be reached through negotiations within the 120-day period, an extension of up to 60 additional days may be sought from the Board.

2015), subject to the condition that CSXT keep intact the right-of-way, including bridges, trestles, culverts, tunnels, rails, ties, and ballast, for the initial 120-day period from the May 2, 2015 effective date (until August 30, 2015), to enable any state or local government agency, or other interested person to negotiate the acquisition of the Line for public use. If any interim trail use/rail banking agreement is executed before the 120-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same Line.

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 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. See 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 October 28, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line.

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

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.