

SERVICE DATE - JUNE 2, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 627X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN FLOYD COUNTY, KY

Decided: May 28, 2004

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 13.4-mile line of railroad between milepost CON 3.1 at Salisbury and milepost CON 16.5 near Clear Creek Junction, in Floyd County, KY. Notice of the exemption was served and published in the Federal Register on February 11, 2003 (68 FR 6984-85). The notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by February 11, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. On April 3, 2003, a decision and notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was served, reopening the proceeding to permit public use negotiations and to establish a 180-day period for the Floyd County Fiscal Court and Floyd County, KY (collectively Floyd), to negotiate an interim trail use/rail banking agreement with CSXT for the entire line.¹ The NITU negotiating period was extended through March 30, 2004, by a decision served on September 26, 2003.

By facsimile received on March 30, 2004, CSXT filed a request to extend the NITU negotiating period until September 30, 2004, and requested an extension of the consummation notice filing deadline until November 30, 2004.²

Because an extension of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, and the rail carrier has indicated its willingness to continue negotiations, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating

¹ The public use condition, which is limited by statute to 180 days, has expired and may not be extended.

² Under 49 CFR 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.

period will be extended to September 30, 2004,³ and the consummation notice filing deadline will be extended to November 30, 2004.

By facsimile received on March 30, 2004, as supplemented on May 12, 2004, the Middle Creek National Battlefield Foundation, Inc. (MCNBF), filed a request for substitution of interim trail user in lieu of Floyd and for an extension of the NITU negotiating period. MCNBF submitted a statement indicating its willingness to assume responsibility for management of, for any legal 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 by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By facsimile dated May 3, 2004, CSXT indicated its willingness to negotiate with MCNBF over trail use/rail banking of the line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations.⁴ Inasmuch as CSXT has not consummated the abandonment and is willing to negotiate with MCNBF for trail use, a NITU will be issued under 49 CFR 1152.29. If no agreement is reached by September 30, 2004, CSXT may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action 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. CSXT's March 30, 2004 requests to extend the NITU negotiating period until September 30, 2004, and to extend the consummation notice filing deadline until November 30, 2004, are granted.

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—in Jackson, Victoria and Wharton Counties, TX, STB Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. The notice of exemption published in the Federal Register on February 11, 2003, 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, until September 30, 2004.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal 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.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specific date.

7. If an agreement for interim trail use/rail banking is reached by September 30, 2004, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1).

8. The authority to abandon must be exercised on or before November 30, 2004.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary