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SERVICE DATE – FEBRUARY 12, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: February 11, 2013

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. The Board granted the exemption subject to trail use, public use, environmental use, and standard employee protective conditions.

The April 2004 decision authorized a 180-day period for Friends of the Cheat (Friends) to negotiate with CSXT for interim trail use/rail banking until October 6, 2004, for the 14.3-mile line under § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. 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 determined 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 then Section of Environmental Analysis, and the historic preservation condition that had been imposed in the April 2004 decision was removed. The remaining environmental condition involves a notification requirement that relates to salvage, and, while still in effect, it is not a barrier to consummating the abandonment.

By a series of decisions, with the most recent decision served on December 10, 2012, the negotiating period under the NITU was extended to April 20, 2013, 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 In accordance with 49 C.F.R. § 1152.29(e)(2), the time for CSXT to consummate the abandonment and file the notice of consummation was automatically extended until June 19, 2013.

In a letter filed on July 2, 2012, Friends, on behalf of Greer Industries (Greer) and the West Virginia State Rail Authority (West Virginia), has requested that the Board vacate the existing NITU, and issue a replacement NITU substituting Greer as a new interim trail sponsor for a 3.0-mile portion of the line from milepost BAJ 0.0 to milepost BAJ 3.0 and for West Virginia to be substituted as a new interim trail sponsor for the remaining 6.78-mile portion of the line from milepost BAJ 3.0 near Manheim to milepost BAJ 9.78, in Preston County, W. Va.

Greer, by letter filed October 1, 2012, and West Virginia, by letter filed November 11, 2012, submitted individual statements of willingness to assume financial responsibility for interim trail use and rail banking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 covering their respective portions of the line. Greer and West Virginia acknowledge that the 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.

In its October 1, 2012 letter, Greer advises that, while it has submitted its statement of willingness, its intentions are not to convert the 3.0-mile railroad right-of-way to a trail, but to acquire and ultimately restore it as an active rail line. Greer states that it is submitting its statement of willingness with the understanding that it will not impact, prohibit, or prejudice its intended rail use of the property. Greer's statement of willingness to assume financial responsibility as the new interim trail sponsor for the above-described 3.0-mile portion of the line will be accepted. Greer, however, may not perform any freight rail operations on the 3.0-mile line of railroad unless Greer first seeks to partially vacate the replacement NITU for its portion of the right-of-way and obtains the requisite authority from the Board to acquire and operate the line as a line of railroad. See R.J. Corman RR Co./Penn. Lines Inc.–Const. & Oper. Exemp.–In Clearfield County, PA, FD 35116 (STB served July 27, 2009).

In a letter filed on November 21, 2012, CSXT states that it is willing to continue to negotiate with Greer and West Virginia for interim trail use/rail banking with respect to the portions of the line sought by each prospective trail sponsor. Therefore, Friends' request will be granted and a replacement NITU will be issued.

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.

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. The NITU served on April 9, 2004, is vacated.
3. A replacement NITU applicable to: (a) Greer as the new interim trail sponsor for the 3.0-mile portion of the line from milepost BAJ 0.0 to milepost BAJ 3.0, and (b) West Virginia as the new interim trail sponsor for the remaining 6.78 mile-portion of the line from milepost BAJ 3.0 to milepost BAJ 9.78, in Preston County, W. Va., is issued, effective on the service date of this decision and notice.
4. 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.
5. 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 described in ordering paragraph 4 above.
6. If an agreement for interim trail use/rail banking is reached by August 11, 2013, the parties to that agreement shall jointly notify the Board within ten days that an agreement has been reached, 49 C.F.R. § 1152.29(d)(2) and (h), and interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed in the April 2004 decision have been met. See 49 C.F.R. § 1152.29(d)(1).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the rail line 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.
8. This decision and notice is effective on its service date.

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