

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY.

Decided: January 25, 2011

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman),¹ an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, Ky., to the end of the track at milepost 36.13 near Evanston, Ky., a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, Ky.²

The exemption was granted subject to public use, environmental, and standard employee protective conditions,³ and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. § 1247(d). After several extensions, the negotiating period under the NITU expired on December 31, 2007.

By pleading filed on December 31, 2007, the Kentucky Rails to Trails Council (KRTC) stated that, on December 17, 2007, Big Sandy Area Development District, on behalf of the Counties, requested that KRTC replace it as the new interim trail use proponent. By decision and notice served on January 23, 2008, the Board vacated the NITU served on December 23,

¹ According to Corman, RJCE’s name has now been changed to R.J. Corman Railroad Property, LLC.

² Earlier decisions in this proceeding have embraced the discontinuance proceeding, Docket No. AB 875X, R.J. Corman Railroad Company/Bardstown Line—Discontinuance of Service Exemption—in Johnson, Magoffin and Breathitt Counties, Ky.

³ The public use condition has expired and may not be reimposed. By decision served April 20, 2005, the Section 106 historic preservation condition was removed. The three self-executing environmental conditions remain in effect.

2004, and granted the request to substitute KRTC as interim trail user for a period of 180 days. The negotiating period under the NITU was extended several times, with the latest extension expiring on January 12, 2010.

On January 12, 2010, the Commonwealth of Kentucky, Tourism, Arts, and Heritage Cabinet (KTAHC)⁴ filed a pleading requesting that the Board substitute it for KRTC as the interim trail proponent. In a NITU served on January 29, 2010, the proceeding was reopened, the NITU served on January 23, 2008 was vacated, and a replacement NITU was issued authorizing KTAHC to negotiate an interim trail use/rail banking agreement with Corman for the right-of-way. The negotiating period under the NITU was extended twice, with the latest extension expiring on January 24, 2011.

By letter filed on January 18, 2011, KTAHC requests another 180-day extension of the NITU negotiating period. KTAHC states that an extension is needed in order to continue to pursue funding for the development of a trail. Corman consents to the extension request and the consequent deadline for its filing a notice of consummation.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of time will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 180 days, from January 24, 2011 to July 23, 2011. Given the time that has elapsed since abandonment was granted, the negotiating parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. KTAHC's request to extend the NITU negotiating period is granted.

⁴ KTAHC is a state governmental entity whose ancillary departments are responsible for the promotion and development of trails in the State of Kentucky.

⁵ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. The negotiating period under the NITU is extended to July 23, 2011.
3. This decision is effective on its service date.

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