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SERVICE DATE - LATE RELEASE JULY 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 588X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN POLK AND McMINN
COUNTIES, TN

Decided: July 19, 2002

By decision and notice of interim trail use or abandonment (NITU) served on April 24, 2002, 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 43.47-mile portion of its line of railroad in the Southern Region, Atlanta Division, Etowah Old Line Subdivision, between milepost OKX 339.00 in Etowah and milepost OKX 382.47 in Copperhill, in McMinn and Polk Counties, TN, subject to environmental, trail use, public use, and standard employee protective conditions. The exemption was scheduled to become effective on May 24, 2002, but on May 3, 2002, Southeast Local Development Corporation, on behalf of Old Line Coalition (collectively referred to as SLDC) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the line.

By decision served on May 9, 2002, SLDC was found financially responsible and the effective date of the exemption authorizing the abandonment was postponed in order to permit the OFA process to proceed. The May 9 decision also set June 3, 2002, as the deadline for either party to request the Board to establish the terms and conditions for the purchase if CSXT and SLDC could not agree on the purchase price. The deadline for filing requests for the establishment of terms and conditions was extended through July 11, 2002, by decisions served on May 23, 2002, June 14, 2002, and June 27, 2002.

By facsimile received on July 11, 2002, and served on CSXT, SLDC states that the parties have reached an agreement for SLDC to acquire the line outside of the OFA process and, therefore, requests that its OFA be withdrawn.

When an entity offering to purchase a line later notifies the Board that it is withdrawing its OFA, the Board will serve a decision vacating the decision which postponed the effective date of the decision granting the exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(g)(2). Accordingly, the OFA process will be terminated, and the May 9 decision will be vacated to permit the prior abandonment authorization for the line subject to the OFA to become effective on the service date of this decision.

In the April 24 decision and notice, the Board authorized a 180-day period for Polk County to negotiate an interim trail use/rail banking agreement with CSXT under the National Trails System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905. The Board noted that the trail use and public use procedures could be delayed or even foreclosed by the financial assistance procedures under 49 U.S.C. 10904. Because the OFA process will be terminated, the NITU and the public use condition will commence with the effective date of this decision.

By facsimile also received on July 11, 2002, SLDC requests to be substituted for Polk County as the interim trail user. SLDC states that CSXT and Polk County agree with the requested substitution and that CSXT and SLDC have reached an agreement for interim trail use/rail banking. SLDC has submitted a statement of willingness to assume financial responsibility which conforms to the requirements for implementing 16 U.S.C. 1247(d), as set forth in 49 CFR 1152.29. SLDC has made the required showing under 49 CFR 1152.29(f) for substitution of interim trail user. Accordingly, the requested relief will be granted.

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

It is ordered:

1. The OFA process in this proceeding is terminated.
2. The decision served on May 9, 2002, is vacated to the extent it postponed the effective date of the abandonment exemption to permit the OFA process to proceed. The abandonment exemption will be effective on the service date of this decision and notice, subject to the conditions imposed in the April 24, 2002 decision, and subject to the replacement NITU issued in this decision.
3. A replacement NITU applicable to SLDC as interim trail user is issued, effective on the service date of this decision and notice.
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, 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 new user's continuing to meet the financial obligations for the right-of-way.

6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and request that it be vacated on a specified date.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary