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SERVICE DATE - MARCH 19, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 524X)

CSX TRANSPORTATION, INC.--ABANDONMENT  
EXEMPTION--IN HARLAN COUNTY, KY

Decided: March 12, 1998

CSXT Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 3.23 miles of its line of railroad between milepost WC-262.3 at Cumberland and milepost WC-265.53 at the end of CSXT ownership near Lynch, in Harlan County, KY. The notice was served and published in the Federal Register on March 25, 1996 (61 FR 12133). By decision served April 19, 1996, the exemption was made subject to the condition that CSXT retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Subject to that condition, the exemption became effective on April 24, 1996.

On May 14, 1996, CSXT informed the Board that it had taken the 3.23-mile line of railroad out of service effective May 10, 1996, and that physical removal of the rail assets would await completion of the section 106 process.

On February 11, 1998, the City of Benham, KY (City), late-filed a request for the issuance of a notice of interim trail use (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with CSXT for use of the line as a trail.<sup>1</sup>

The City's requests cannot be granted.

By letter dated February 25, 1998, and filed on March 3, 1998, CSXT maintains that the Board no longer has jurisdiction to impose either a public use condition or an interim trail use condition. CSXT refers to its May 1996 letter, which, it asserts, indicates that the line was abandoned effective May 10, 1996. CSXT also states that it is not willing to negotiate with the City for interim trail use. Therefore, even without resolving the question of whether the Board retains jurisdiction here for any purpose, a NITU cannot be issued in this proceeding because the Trails Act permits only voluntary interim trail use. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986); National Wildlife Fed'n v. ICC, 850 F.2d 694 (D.C. Cir. 1988).

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<sup>1</sup> The March 25, 1996 notice stated that requests for trail use/rail banking had to be filed by April 4, 1996, and that requests for public use conditions had to be filed by April 15, 1996.

The Board no longer has authority to impose a public use condition. Section 10905 permits public use conditions to be imposed upon any abandonment authorized by the Board for a period running for no more than 180 days from the effective date of the Board's authorization. In this proceeding, the Board's authorization of the abandonment exemption became effective on April 24, 1996. Thus, even if a public use condition had been timely sought, no public use condition could be permitted to extend beyond October 21, 1996. In short, regardless of any continuing jurisdiction the Board may have over the line by virtue of the fact that the section 106 condition remains in effect, the Board would have no jurisdiction to impose the public use condition sought almost two years after the effective date of the abandonment exemption.

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

It is ordered:

1. The requests for issuance of a notice of interim trail use/rail banking and for issuance of a public use condition are denied.
2. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary