

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB 55 (Sub-No. 401)

CSXT TRANSPORTATION, INC.—ABANDONMENT—BETWEEN DELPHI AND
FRANKFORT, IND.

Decided: November 3, 2016

On September 24, 2015, the Board issued a Decision and Certificate of Interim Trail Use or Abandonment (CITU) permitting Carroll County Wabash & Erie Canal, Inc. (CCW&EW) to enter into negotiations with CSX Transportation Inc. (CSXT) for interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), with respect to the 0.60-mile portion of rail line (Line) between milepost 0QA 112.6 and milepost 0QA 113.2 in Carroll County, Ind., that CSXT obtained authority to abandon. The Board granted CCW&EW's request for a 180-day extension on March 23, 2016, so that CCW&EW and CSXT could continue ongoing negotiations.

On September 27, 2016, CCW&EW and Historic Landmarks Foundation of Indiana, d.b.a. Indiana Landmarks, filed a joint request that Indiana Landmarks be substituted for CCW&EW as interim trail user per 49 C.F.R. § 1152.29(f).¹ The parties request that the transfer of responsibility for the Line occur on September 27, 2016. Indiana Landmarks submitted a Statement of Willingness to Assume Financial Responsibility for the Line. This statement also includes an acknowledgment that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By letter filed with the Board on September 29, 2016, CSXT concurs with the substitution of Indiana Landmarks as trail user.

Here, the parties have met their obligations under the Trails Act and 49 C.F.R. § 1152.29. CSXT agrees to the substitution and Indiana Landmarks' Statement of Willingness satisfies the requirements of 49 C.F.R. § 1152.29. Accordingly, the request of CCW&EW and Indiana Landmarks will be granted. The Board will vacate the CITU under which CCW&EW has been the trail user and reissue a new CITU substituting Indiana Landmarks as the trail user.

¹ On September 27, 2016, Indiana Landmarks and CCW&EW submitted a request for another 180-day extension of the original CITU. The request for an extension is mooted by the request for a substitution of trail user, which will result in issuance of a new CITU.

It is ordered:

1. This proceeding is reopened.
2. The CITU served on September 24, 2015, is vacated.
3. A replacement CITU applicable to Historic Landmarks Foundation of Indiana, d.b.a. Indiana Landmarks, as interim trail user is issued, effective on the service date of this decision and certificate for a period of 180 days, to May 2, 2017, subject to any environmental conditions that remain in effect.
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 assess 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 for the right-of-way described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way 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.