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SERVICE DATE – DECEMBER 19, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 713X)

CSX TRANSPORTATION, INC.—ABANDONMENT  
EXEMPTION—IN MONROE COUNTY, ALA.

Decided: December 16, 2011

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.5-mile rail line on its Southern Region, Atlanta Division, Southern Alabama Subdivision, between mileposts 0RA 676.27 and 0RA 677.79 at the end of the track, in Hybart, Monroe County, Ala. Notice of the exemption was served and published in the Federal Register on November 10, 2011 (76 Fed. Reg. 70,223). The exemption was scheduled to become effective on December 10, 2011.

By decision served December 6, 2011, the Board imposed two environmental conditions on the abandonment, requiring CSXT to consult with: (1) the Alabama Department of Transportation regarding salvage and abandonment procedures prior to commencing any salvage activities; and (2) the U.S. Department of Commerce, National Geodetic Survey at least 90 days prior to commencing any salvage activities that would disturb or destroy any geodetic survey station markers.

On November 18, 2011, the Monroe County Commission (MCC), filed a request for the issuance of a notice of interim trail use (NITU) for the line 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 acquisition of the right-of-way for use as a recreational trail. MCC requests that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. MCC states that the 180-day period is needed to begin negotiations with CSXT.

MCC also submitted a statement of willingness to assume financial responsibility for the management of, for 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. By response filed on December 15, 2011, CSXT has indicated its willingness to negotiate with MCC for interim trail use.

Because MCC's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days from the effective date of the abandonment, CSXT may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision and notice approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because MCC has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the December 10, 2011 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with MCC, but may engage in negotiations with other interested persons.

As conditioned, 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. Upon reconsideration, the notice served and published in the Federal Register on November 10, 2011, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the December 10, 2011 effective date of the exemption (until June 6, 2012).
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials.

CSXT shall otherwise keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case they 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 user's continuing to meet the financial obligations for the right-of-way.

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

7. If an agreement for interim trail use/rail banking is reached by June 6, 2012, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, subject to the environmental conditions imposed in the December 6, 2011 decision. See 49 C.F.R. § 1152.29(d)(1).

8. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.