

SERVICE DATE – MAY 14, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 688X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN MARION COUNTY, IN

Decided: May 12, 2009

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.01-mile line of railroad, known as the Arlington Industrial Track, located on its Northern Region, Great Lakes Division, Indianapolis Belt Subdivision, extending from milepost QIA 1.11 (English Ave.) to the end of the track at milepost QIA 0.1 in Marion County, IN. Notice of the exemption was served and published in the Federal Register on October 3, 2008 (73 FR 57727). In this decision, the Board is granting the requests by Indiana Trails Fund, Inc. (ITF) to extend the interim trail use/rail banking negotiating period and by CSXT to extend the time for it to exercise its abandonment authority.

By decision and notice of interim trail use or abandonment (NITU) served on November 3, 2008, the proceeding was reopened, and a 180-day period was authorized for ITF to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiating period under the NITU expired on May 3, 2009.<sup>1</sup>

On April 28, 2009, ITF submitted a request for a 180-day extension of the NITU negotiating period until October 30, 2009. ITF states that, despite much work, the additional time is needed to finalize the negotiations with CSXT. On May 1, 2009, CSXT concurred in the request to extend the negotiating period.<sup>2</sup> Additionally, CSXT has requested an extension of the consummation notice filing deadline from October 3, 2009, until December 29, 2009.

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<sup>1</sup> In addition to interim trail use, the November 3, 2008 decision also imposed a public use condition that expired on May 3, 2009, and that condition may not be extended. The decision also made a Finding of No Significant Impact under 49 CFR 1105.10(g), because no environmental or historic preservation issues had been raised by any party or identified by the Board's Section of Environmental Analysis.

<sup>2</sup> On May 1, 2009, CSXT also submitted a letter clarifying that it concurred with ITF's full 180-day extension request (to October 30, 2009, rather than to October 3, 2009, as stated in its first submission).

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>3</sup> 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to October 30, 2009, and the consummation notice filing deadline will be extended to December 29, 2009.

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

It is ordered:

1. The requests by ITF for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise its abandonment authority are granted.
2. The negotiating period under the NITU is extended to October 30, 2009.
3. The authority to abandon must be exercised on or before December 29, 2009.
4. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary

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<sup>3</sup> See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).