

33217
DO

SERVICE DATE - DECEMBER 10, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 602X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN LIMESTONE COUNTY, AL

Decided: December 4, 2002

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 0.56-mile line of railroad between milepost 000-290.2 and milepost 000-290.76 in Athens, Limestone County, AL. Notice of the exemption was served and published in the Federal Register on December 21, 2001 (66 FR 66013-14). The exemption became effective on January 22, 2002.¹

By petition filed November 21, 2002, the Limestone County Parks and Recreation Board. (LCPRB) late-filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with CSXT for acquisition of the right-of-way for use as a trail.² LCPRB submitted a statement indicating its willingness to assume full 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 CFR 1152.29, and acknowledged that the use of the right-of-way for trail

¹ By decision served January 18, 2002, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that no salvage activities shall begin until the requirements under section 7 of the Endangered Species Act, 16 U.S.C. 1531, have been completed. By decision served February 7, 2002, the proceeding was reopened, and the endangered species condition imposed in the January 18, 2002 decision was removed.

² The December 21 notice provided that trail use/rail banking requests had to be filed no later than December 31, 2001. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that LCPRB's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

purposes is subject to future reconstruction and reactivation for rail service. By letter filed on November 29, 2002, CSXT indicated its willingness to negotiate with LCPRB. CSXT also requests that the Board extend the deadline for the filing of its notice of consummation until 60 days after the end of the trail use negotiating period.³ Because CSXT is willing to negotiate with LCPRB for interim trail use, a NITU will be issued. Also, CSXT has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding.

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way⁴ and the carrier is willing to enter into negotiations. Inasmuch as CSXT has not consummated the abandonment and is willing to negotiate with LCPRB for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision or until June 8, 2003. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision 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. CSXT's request for an extension of time to exercise the abandonment authority is granted. The authority to abandon must be exercised, and the notice of consummation must be filed, no later than August 7, 2003.
3. Upon reconsideration, the notice of exemption published in the Federal Register on December 21, 2001, exempting the abandonment of the line described above is modified to the extent

³ In the December 21, 2001 notice, the Board stated that, if consummation had not been effected by CSXT's filing of a notice of consummation by December 21, 2002, the authority to abandon would automatically expire.

⁴ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until June 8, 2003).

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, 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 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 8, 2003, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary