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SERVICE DATE - NOVEMBER 4, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 588X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN POLK AND McMINN  
COUNTIES, TN

Decided: October 30, 2002

By decision and notice of interim trail use or abandonment (NITU) served on April 24, 2002, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CSX Transportation, Inc. (CSXT), of a 43.47-mile portion of its line of railroad in the Southern Region, Atlanta Division, Etowah Old Line Subdivision, between milepost OKX 339.00 in Etowah and milepost OKX 382.47 in Copperhill, in McMinn and Polk Counties, TN, subject to environmental, trail use,<sup>1</sup> public use, and standard employee protective conditions. Before the decision authorizing abandonment became effective, the Southeast Local Development Corporation, on behalf of Old Line Coalition (collectively referred to as SLDC) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the line.<sup>2</sup>

On July 11, 2002, SLDC informed the Board that the parties had reached an agreement for SLDC to acquire the line outside of the OFA process and requested that its OFA be withdrawn. SLDC also requested that SLDC be substituted for Polk County as the interim trail user. By decision and notice served on July 19, 2002, the OFA process in this proceeding was terminated and the May 9 decision was vacated to the extent it postponed the effective date of the abandonment exemption to permit the OFA process to proceed and a replacement NITU applicable to SLDC as interim trail user was issued, effective on the service date of the decision and notice.

By letter filed on October 23, 2002, Tennessee Overhill Association (TN Overhill) requests to be substituted for SLDC as the interim trail user. TN Overhill states that SLDC and CSXT agree with the requested substitution and that CSXT and TN Overhill have reached an agreement for interim trail

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<sup>1</sup> The Board authorized a 180-day period for Polk County to negotiate an interim trail use/rail banking agreement with CSXT under the National Trails System Act, 16 U.S.C. 1247(d).

<sup>2</sup> By decision served on May 9, 2002 (May 9 decision), SLDC was found financially responsible and the effective date of the exemption authorizing the abandonment was postponed in order to permit the OFA process to proceed.

use/rail banking. TN Overhill has submitted a statement of willingness to assume financial responsibility which conforms to the requirements for implementing 16 U.S.C. 1247(d), as set forth in 49 CFR 1152.29, and has made the required showing under 49 CFR 1152.29(f) for substitution of interim trail user. Accordingly, the requested relief will be granted.

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

It is ordered:

1. A replacement NITU applicable to TN Overhill as interim trail user is issued, effective on the service date of this decision and notice.
2. The new trail user is required 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.
3. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
4. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and request that it be vacated on a specified date.
5. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary