

SERVICE DATE – JULY 21, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 801X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER
AND FAYETTE COUNTIES, W. VA.

Decided: July 20, 2020

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 6.39-mile rail line between milepost CAF 20.61 and milepost CAF 27.0, near Rainelle in Greenbrier and Fayette Counties, W. Va. (the Line).¹ Notice of the exemption was served and published in the Federal Register on June 22, 2020 (85 Fed. Reg. 37,492). The exemption is scheduled to become effective on July 22, 2020.

On June 26, 2020, the Greenbrier County Commission and the Fayette County Commission (the Counties), jointly requested issuance of a notice of interim trail use or abandonment (NITU) to negotiate with CSXT to establish interim trail use and rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. In a response filed on June 30, 2020, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with the Counties.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on June 26, 2020, recommending that two conditions be imposed on any decision granting abandonment authority. In the Draft EA, OEA noted that the West Virginia Department of Environmental Protection, Division of Water and Waste Management (WVDEP/DWWM) had submitted a comment stating that removal of track material would require grading, which is considered construction activity. The West Virginia National Pollutant Discharge Elimination System Program (WV/NPDES) requires construction site operators to obtain authorization to discharge stormwater. Accordingly, OEA recommended a condition requiring CSXT to consult with WVDEP/DWWM prior to the commencement of any salvage activities to address any required permits.

¹ CSXT was granted authority in 2017 to abandon two contiguous segments of track that together encompass the Line. See CSX Transp., Inc.—Aban. Exemption—in Greenbrier & Fayette Ctys., W. Va., AB 55 (Sub No. 768X) (STB served Jan. 27, 2017) and CSX Transp., Inc.—Aban. Exemption—in Greenbrier Cty., W. Va., AB 55 (Sub-No. 776X) (STB served Dec. 20, 2017). Because its authority to abandon expired in both proceedings, CSXT seeks renewed authority to abandon the Line.

OEA also stated in the Draft EA that the National Geodetic Survey (NGS) has indicated that there may be geodetic survey markers present in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring CSXT to notify NGS at least 90 days prior to beginning salvage activities to allow time for any geodetic survey markers to be preserved.

OEA issued its Final EA on July 17, 2020, noting that no new comments on the Draft EA were received and recommending again that the two previously recommended conditions be imposed. In the Final EA, OEA recommends revising the two conditions in the Draft EA by adding “abandonment-related” before “salvage activities” to clarify that the conditions only apply to salvage related to the abandonment. Accordingly, based on OEA’s recommendations, the conditions proposed in the Draft EA, as modified by the Final EA, will be imposed.

Interim Trail Use. The Counties have submitted a statement of willingness to assume full responsibility for management of, indemnifying the railroad against any potential liability for, and payment of taxes on the right-of-way, as required at 49 C.F.R. § 1152.29, and have acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service. As noted above, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with the Counties.

Because the Counties’ 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 one-year period prescribed below. 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) & (h). If no agreement is reached within one year, CSXT may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Public Use. The Counties ask that CSXT be prohibited from disposing of the Line, other than the tracks, ties, and signal equipment, except for public use on reasonable terms for a period of 180 days after the effective date of the abandonment authorization. The Counties request this condition because, they state, the Line is along a scenic waterway and the corridor would make an excellent recreational trail, and conversion of the Line to trail use is in accordance with local plans. In addition, the Counties state that the Line provides important wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes. According to the Counties, the 180-day period is needed to assemble and review title information, complete a trail plan, and negotiate with CSXT.

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 Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 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 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. 49 C.F.R. § 1152.28(a)(2). Because the Counties have satisfied these requirements, a 180-day public use condition will be imposed, requiring CSXT to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties and signal equipment), commencing from July 22, 2020, the effective date of the exemption.

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 the Counties but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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 June 22, 2020, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Counties to negotiate with CSXT for trail use for the Line, for a period of one year from the service date of this decision and notice, until July 21, 2021, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until January 18, 2021. The abandonment is also subject to the following conditions:²
 - (a) Prior to commencement of any abandonment-related salvage activities, CSXT shall consult with WVDEP/DWWM to address any required permits.
 - (b) CSXT shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.
3. CSXT shall keep intact the right-of-way (other than tracks, ties, and signal equipment), including potential trail-related structures such as bridges, trestles, culverts, and

² If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with these conditions would

tunnels, for a period of 180 days from the effective date of the exemption, until January 18, 2021, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the interim trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsors 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 sponsors are immune from liability, in which case they need only indemnify the railroad against any potential liability), and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsors' continuing to meet their responsibilities for the right-of-way described in 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. See 49 C.F.R. § 1152.29(d)(2), (h).

7. If interim trail use is implemented, and subsequently the trail sponsors intend to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by July 21, 2021, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.