

SERVICE DATE – JULY 27, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 679X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN DELAWARE
COUNTY, IN

Decided: July 26, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.4-mile line of railroad on its Northern Region, Great Lakes Division, Indianapolis Line Subdivision, from milepost QIM 0.0 to milepost QIM 1.4, known as the Muncie Belt, in Muncie, Delaware County, IN. Notice of the exemption was served and published in the Federal Register on June 28, 2007 (72 FR 35544-45). The exemption is scheduled to become effective on July 28, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 3, 2007. In the EA, SEA noted that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to notify NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station marker.

Comments to the EA were due by July 17, 2007. No comments were received. Accordingly, the condition recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the rail line. On July 5, 2007, the City of Muncie, IN (Proponent) filed a request for issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. Proponent has submitted a statement of 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 purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on July 16, 2007, CSXT states that it concurs with Proponent's request for interim trail use.

Because Proponent's request complies with the requirements of 49 CFR 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, CSXT may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As noted above, Proponent also requested a 180-day public use condition. Proponent requests that CSXT be prohibited from disposing of the corridor, other than 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. Proponent states that the time period is needed to review title information and commence negotiations with the carrier.

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 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 CFR 1152.28(a)(2). Because Proponent has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the July 28, 2007 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 Proponent, but may engage in negotiation 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 June 28, 2007, 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 the right-of-way described above for a period of 180 days commencing from the July 28, 2007 effective date of the exemption (until January 24, 2008), and subject to the condition that CSXT notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the affected geodetic station marker by NGS.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. For the above-described line, CSXT shall keep intact the right-of-way, 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 above-described line for public use. If an interim trail use/rail banking agreement is executed before January 24, 2008, 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, the agreement 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 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 January 24, 2008, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the above-described line, provided the other condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary