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SERVICE DATE – AUGUST 28, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 816X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN PIKE COUNTY, KY.

Decided: August 28, 2024

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 5.1-mile rail line that runs between milepost CML 9.0 and milepost CML 14.1, Louisville Division, Winns Branch-Big Sandy Subdivision, in Pike County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on July 31, 2024 (89 Fed. Reg. 61,574). The exemption is scheduled to become effective on August 30, 2024.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on August 5, 2024, recommending that five conditions be imposed on any decision granting abandonment authority.

In the Draft EA, OEA stated that the U.S. Fish and Wildlife Service (USFWS) submitted comments regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. USFWS identified three threatened and endangered species (including the northern long-eared bat) and one candidate species. Based on information provided by CSXT and USFWS, OEA recommended that any decision granting abandonment authority include a condition requiring CSXT to conduct any abandonment-related salvage activities between November 15 and March 31 to minimize potential impacts to the northern long-eared bat.

In the Draft EA, OEA noted comments submitted by the Kentucky Department for Environmental Protection (DEP) recommending that CSXT: (1) develop a Groundwater Protection Plan (GPP) for protection of groundwater resources; (2) utilize best management practices to reduce runoff from project activities into nearby waters; (3) obtain permits from the Division of Water, Water Resources Branch for work in portions of the project within the regulated floodplain; (4) determine if the Line is within the 1% annual chance floodplain and, if so, obtain a stream construction permit; (5) determine if a Floodplain General Permit or Individual Permit is required; (6) determine if a 404 permit from the US Army Corps of Engineers (Corps) or 401 Water Quality Certification is required if working below the top of a bank, within a stream channel, or within wetlands; (7) take reasonable precaution to prevent particulate matter from becoming airborne; (8) report any underground storage tanks (USTs) encountered during the project to the Kentucky Division of Waste Management (KDWM), UST

Branch; (9) dispose of any solid waste generated by this project at a permitted facility; and (10) use the Kentucky Biological Assessment Tool to determine potential impacts to federally or state listed species.

Accordingly, OEA recommended that any Board decision granting abandonment authority include a condition requiring CSXT to consult with DEP prior to commencement of any abandonment-related salvage activities regarding the concerns listed in DEP's July 10, 2024 letter. OEA also recommended a condition requiring CSXT to notify KDWM, UST Branch, if any USTs are encountered during abandonment-related salvage activities. OEA further stated that, although it had not received comment from the Corps, the Line is near local waterways, and OEA therefore recommended a condition requiring CSXT to consult with the Corps prior to commencement of any abandonment-related activities and comply with its reasonable requirements.

Finally, OEA stated in the Draft EA that CSXT had served an environmental and historic report on the Kentucky Heritage Council (State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c), but that OEA had not received comment from the SHPO and therefore had not been able to consider the SHPO's opinion before determining whether the Line may be eligible for listing on the National Register of Historic Places (National Register). Accordingly, OEA recommended a condition requiring CSXT to (1) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect, or APE) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed, and (2) report back to OEA regarding any consultations with the SHPO and the public.

Comments on the Draft EA were due by August 21, 2024. OEA issued its Final Environmental Assessment (Final EA) on August 26, 2024, indicating that no comments were received. Accordingly, OEA recommends that the conditions previously recommended in the Draft EA be imposed upon any decision granting abandonment authority. Based on OEA's analysis, the conditions recommended in the Final EA will be imposed.

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. The notice served and published in the Federal Register on July 31, 2024, exempting the abandonment of the Line described above is subject to the following conditions:¹

¹ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with

(a) CSXT shall, prior to commencement of any abandonment-related salvage activities, consult with DEP regarding the concerns listed in DEP's letter dated July 10, 2024;

(b) CSXT shall, if it encounters any USTs during any abandonment-related salvage activities, notify KDWM, UST Branch;

(c) CSXT shall, prior to commencement of any abandonment-related salvage activities, consult with the Corps regarding its requirements and, if applicable, shall comply with its reasonable requirements;

(d) CSXT shall conduct abandonment-related salvage activities during the northern long-eared bat's inactive season between November 15 and March 31; and

(e) CSXT shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project APE that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. CSXT shall report back to OEA regarding any consultations with the SHPO and the public. CSXT may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

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

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

respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.