

SERVICE DATE – DECEMBER 18, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 625X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN PRESTON COUNTY, W. VA.

Decided: December 17, 2018

By decision and notice of interim trail use or abandonment (NITU) served on April 9, 2004, 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 14.3-mile line of railroad extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 14.3 near Albright in Preston County, W. Va. (the Line). The Board granted the exemption subject to trail use, public use, environmental, historic preservation, and standard employee protective conditions.¹

On September 10, 2018, the National Association of Reversionary Property Owners (NARPO) requested that the Board rescind the NITU for the portion of the Line between milepost BAJ 9.78 and milepost BAJ 14.3. By decision served October 30, 2018 (October Decision), the Board denied NARPO's request as moot, noting that, in 2006, CSXT indicated that it had consummated the abandonment of this portion of the Line and that this portion of the Line was no longer part of the interstate rail system and was not subject to the Board's jurisdiction. The Board also noted that the NITU for the portion of the Line from milepost BAJ 0.0 to milepost BAJ 9.78 was later vacated and a replacement NITU was issued for milepost BAJ 3.0 to milepost BAJ 9.78. October Decision, slip op. at 1 n.2. The Board further noted that the NITU negotiating period for that portion of the Line ultimately expired without a trail use agreement being reached. Id.

On November 14, 2018, NARPO requested that the Board rescind the NITU for the portion of the Line between milepost BAJ 3.0 and milepost BAJ 9.78. However, as the Board explained in its October Decision, the NITU negotiating period for that portion of the Line expired without a trail use agreement being reached. See CSX Transp., Inc.—Aban. Exemption—in Preston Cty., W. Va., AB 55 (Sub-No. 625) (STB served Feb. 4, 2016) (extending the NITU negotiating period to July 26, 2016). Thereafter, CSXT did not timely file a notice of consummation of abandonment for this portion of the Line; therefore, the authority to

¹ By decision served January 26, 2006, the Section 106 historic preservation condition was removed.

abandon automatically expired and this portion of the Line remains an active line of rail subject to the Board's jurisdiction. See 49 C.F.R. § 1152.29(e)(2). There is no merit to NARPO's claim that the Board may require CSXT to consummate the abandonment due to "inaction" of the parties. Nothing in the statute or the Board's regulations require that CSXT consummate the abandonment of a line if no trail use agreement is reached. Rather, under 49 C.F.R. § 1152.29(e)(2), should CSXT want to abandon this portion of the Line, it must again seek Board authority to do so. For these reasons, NARPO's request will be denied as moot.

It is ordered:

1. NARPO's request is denied as moot.
2. This decision is effective on its date of service.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.