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SERVICE DATE – NOVEMBER 15, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 411X)

NORFOLK SOUTHERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN THE CITY OF EVANSVILLE, IND.

Decided: November 15, 2022

On September 29, 2022, Norfolk Southern Railway Company (NSR) filed a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F-Exempt Abandonments to abandon an approximately 0.24-mile rail line extending from milepost +/1 0.00 EB to milepost +/- 0.24 EB in the City of Evansville, Ind. (the Line). Notice of the exemption was served and published in the Federal Register on October 19, 2022 (87 Fed. Reg. 63,569). The exemption is scheduled to become effective on November 18, 2022.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on October 21, 2022, recommending that two conditions be imposed on any decision granting abandonment authority. First, to ensure that a scheduled street paving project in the City of Evansville is not adversely affected, OEA recommended that, in any decision granting abandonment authority, the Board impose a condition requiring NSR to consult with the City of Evansville prior to undertaking abandonment-related salvage activities to ensure that any potential work conflicts would be avoided.

Second, the Indiana Department of Natural Resources, Division of Preservation & Archaeology (State Historic Preservation Office, or SHPO), submitted comments indicating that, based on the available documents, the SHPO has not identified any historic buildings, structures, districts, or objects listed in or eligible for inclusion in the National Register of Historic Places (National Register) within the area of potential effect (APE) of the proposed abandonment. However, to address the SHPO's concerns regarding any prehistoric or historic archaeological artifacts or human remains that may be uncovered during abandonment-related salvage activities, OEA recommended that the Board impose a condition requiring NSR to cease work and notify the SHPO, OEA, and any other consulting parties covered by Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, in the event of any unanticipated discovery of archeological artifacts or human remains. Comments on the Draft EA were due by November 7, 2022.

OEA issued its Final Environmental Assessment (Final EA) on November 15, 2022, indicating that comments were received from the Quapaw Nation Historic Preservation Program (the Tribal Historic Preservation Office, or THPO). The Quapaw Nation THPO states that they do not anticipate that the proposed abandonment would adversely impact any cultural resources.

However, the Quapaw Nation THPO states that, if artifacts or human remains are discovered during project activities, work should cease immediately and the Quapaw Nation THPO should be contacted. Therefore, in the Final EA, OEA recommends that the second condition in the Draft EA be modified specifically to add the Quapaw Nation THPO as a consulting party in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during abandonment-related salvage activities.

Consistent with OEA's recommendations, the two 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 October 19, 2022, exempting the abandonment of the Line described above is subject to the following conditions:¹
 - (a) Prior to undertaking any abandonment-related salvage activities, NSR shall consult with the City of Evansville regarding the City's plans for street improvements. NSR shall coordinate with the City of Evansville to avoid potential work conflicts.
 - (b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during NSR's abandonment-related salvage activities, NSR shall immediately cease all work and notify OEA, the Quapaw Nation THPO, other interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, the Quapaw Nation THPO, other interested federally recognized tribes, the railroad, and other consulting parties to determine whether appropriate mitigation measures are necessary.
3. This decision and notice is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

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 the conditions set forth below is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.