

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN DOCKET NO. AB 33 (Sub-No. 304X)

September 17, 2012

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

The Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on August 28, 2012 for public review and comment. In the EA, OEA recommended three environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

During the EA comment period, OEA received joint comments from the Iowa Natural Heritage Foundation (INHF), the City of Laurens (Laurens), and the Pocahontas County Conservation Board (PCCB). Comments were also received from the Iowa Tribe of Kansas and Nebraska.

In a letter dated August 20, 2012, INHF, PCCB, and Laurens expressed interest in converting the line into a trail. The parties filed a request for interim trails use/railbanking pursuant to 49 C.F.R. § 1152.29 and a request for public use pursuant to 49 C.F.R. § 1152.28. The rail applicant, Union Pacific Railroad Company (UP), has responded that it is willing to negotiate an interim trail use/railbanking agreement.

OEA notes that the National Trails System Act (Trails Act)¹ gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. The Board's role under the Trails Act is ministerial.² The Board has no involvement in the negotiations between the railroad and the potential trail sponsor and does not approve or set the terms of trail use/railbanking agreements.³ Further, the Board does not conduct an environmental review of a potential conversion to interim rail use and railbanking because this does not exercise sufficient federal control so as to qualify as a "major Federal action" under the National Environmental Policy Act.⁴ Accordingly, no changes to the EA are recommended in response to these comments.

¹ 16 U.S.C. § 1247(d).

² Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990).

³ Georgia Great S. Div.—Aban. & Discontinuance Exemption—Between Albany & Dawson, in Terrell, Lee & Dougherty Counties, Ga., 6 S.T.B. 902, 907 (2003).

⁴ 40 C.F.R. § 1508.18.

In a letter dated September 5, 2012, the Iowa Tribe of Kansas and Nebraska submitted comments indicating that it has no objection to the project as proposed. The Tribe notes that it wishes to be informed if any consultations are requested under Section 106 of the National Historical Preservation Act,⁵ if any new historical or cultural properties are discovered during the salvage process, or if any adverse effects to such properties are reported.

The Iowa Tribe of Kansas and Nebraska further requests that UP discontinue salvage activities and notify the Tribe if skeletal human remains or any objects falling under the Native American Graves Protection and Repatriation Act⁶ are discovered during the salvage process. Accordingly, OEA will recommend a new condition requiring UP to immediately cease all work and notify OEA, all interested Federally recognized tribes, and the Iowa State Historic Society (or SHPO) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities.

Conclusions

The EA comment period has ended. Accordingly, OEA recommends that the conditions recommended in the EA, as well as the additional conditions recommended in this document, be imposed upon any decision granting abandonment authority. The combined conditions are:

- 1. Union Pacific Railroad Company shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers located in the project area.**
- 2. Prior to commencement of any salvage activities, Union Pacific Railroad Company shall consult with the U.S. Fish and Wildlife Service regarding potential impacts from salvaging activities to Federally listed threatened and endangered species that may occur in the vicinity of the line. The railroad shall report the results of these consultations in writing to the Board's Office of Environmental Analysis prior to the onset of salvage operations.**
- 3. Union Pacific Railroad Company shall, prior to commencement of any salvage activities, consult with the Iowa Department of Natural Resources regarding its storm water permitting process and shall comply with all reasonable requirements.**
- 4. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's salvage activities, the railroad will immediately cease all work and notify the Office of Environmental Analysis (OEA), interested Federally recognized tribes, and the Iowa State Historical Society (or SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, interested Federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.**

If the above conditions are imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

⁵ 16 U.S.C. § 470f.

⁶ See 43 C.F.R. § 10.4.

OEA CONTACT: Joshua Wayland
202-245-0330
waylandj@stb.dot.gov