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SERVICE DATE - SEPTEMBER 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE/ABANDONMENT

STB Docket No. AB-290 (Sub-No. 206X)

NORFOLK AND SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN MADISON COUNTY, IL

Decided: September 10, 1999

Norfolk Southern Railway Company (NS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 7.5-mile line of railroad between milepost A-13.0 at Bluffs Junction to milepost A-20.5 at Troy Junction, in Edwardsville, Madison County, IL. Notice of the exemption was served and published in the Federal Register on August 16, 1999 (64 FR 44576-77). The exemption is scheduled to become effective on September 15, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 20, 1999. In the EA, SEA states that the U.S. Fish and Wildlife Service (FWS) has expressed concern about the endangered Indiana bat and the threatened eastern prairie fringed orchid. FWS indicates that the Indiana bat utilizes trees in this area and that salvage operations should be prohibited during the period from April 1 through September 30. FWS also states that the eastern prairie fringed orchid is often found in the remnant prairie tracts along undisturbed rights-of-way, and that if the orchid is found, further consultation would be necessary to protect this endangered species. On August 25, 1999, NS filed a letter protest arguing that the environmental condition prohibiting salvage from April 1 through September 30 is too broad and that the FWS concern regarding protection of the Indiana bat can be met by prohibiting only the cutting of any trees along the right-of-way from April 1 through September 30. SEA agrees with NS. Therefore, SEA recommends that conditions be imposed: (1) prohibiting NS from cutting any trees along the right-of-way during any salvage operations performed between April 1 and September 30; and (2) requiring NS to cease salvage operations, if the eastern prairie fringed orchid is found, and consult with the FWS and abide by the FWS conditions for preservation of the orchid.

SEA also states that the Illinois Environmental Protection Agency (IEPA) has expressed concern with the disposal of old wood cross ties and other treated wood materials. Therefore, SEA recommends that a condition be imposed requiring NS to consult with the IEPA and develop an acceptable method of disposing of old wood cross ties and other treated wood materials prior to salvage operations.

On August 16, 1999, the National ESA and Wetlands Coalition (NEWC) filed a letter stating that the federal endangered species the Indiana bat (*Myotis sodalis*), the Karner blue butterfly (*Lycaeides melissa samuealis*), and the Piping plover (*Charadrius melodus*) are in the immediate vicinity of the proposed abandonment. NEWC further states that a survey of the Alton quadrangle of the National Wetlands Inventory of the U.S. Fish and Wildlife (FWS) shows four wetlands on

both sides of the right-of-way. NEWC requests that, prior to salvage operations, NS consult with the Illinois Department of Natural Resources for ESA compliance and the U.S. Army Corps of Engineers (Corps) for wetlands compliance to determine if permits are required. In the correspondence from FWS and the Corps included in the notice of exemption submitted by NS, as indicated, FWS expressed concern about the Indiana bat and the eastern prairie fringed orchid and the Corps specified that the proposed project as described will have no significant impact on the fish and wildlife resources and habitats and that an individual Department of the Army permit pursuant to section 404 of the Clean Water Act is not required for the project area. Under the circumstances, SEA does not recommend that any further conditions be imposed based on NEWC's comments and the request will be denied.

By petition filed August 26, 1999, the Madison County Metro-East Transit District (Madison Transit) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with NS for acquisition of the right-of-way for use as a trail. Madison Transit submitted a statement indicating its 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 reactivation for rail service. By reply filed August 30, 1999, NS indicated its willingness to negotiate with Madison Transit for interim trail use.

Madison Transit's request complies with the requirements of 49 CFR 1152.29 and NS is willing to negotiate. Therefore, 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, NS may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision 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 of exemption served and published in the Federal Register on August 16, 1999, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from September 15, 1999 (until March 13, 2000), and subject to the conditions that NS shall: (1) be prohibited from cutting any trees along the right-of-way during any salvage operations performed between April 1 and September 30; (2) cease salvage operations, if the

eastern prairie fringed orchid is found, and consult with the FWS and abide by the FWS conditions for preservation of the orchid and (3) consult with the IEPA and develop an acceptable method of disposing of old wood cross ties and other treated wood materials prior to salvage operations.

3. If an interim trail use/rail banking agreement is reached, it 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.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by March 13, 2000, interim trail use may be implemented. If no agreement is reached by that time, NS may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary