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SERVICE DATE – LATE RELEASE OCTOBER 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 275X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN GASTON COUNTY, NC

Decided: October 26, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 2.0-mile line of railroad between milepost HG 45.0 and milepost 47.0 in Gastonia, in Gaston County, NC. Notice of the exemption was served and published in the Federal Register on September 27, 2006 (71 FR 56585). The exemption was scheduled to become effective on October 27, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 2, 2006. In the EA, SEA states that the U.S. Environmental Protection Agency, Region 4 (USEPA), submitted comments stating that the proposed abandonment did not appear to be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements. However, because the North Carolina Department of Environment and Natural Resources (DENR) has been authorized to implement the NPDES permit program, USEPA recommends that NSR consult with DENR. Accordingly, SEA recommends a condition requiring NSR to consult with DENR prior to beginning salvage activities regarding NPDES permitting requirements.

SEA also states that National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring NSR to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the markers' possible relocation by NGS.

Comments to the EA were due by October 17, 2006. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On October 10, 2006, the City of Gastonia (the City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way (ROW), between milepost HG 45.0 and milepost HG 46.8, a distance of 1.8 miles, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905 for that portion of the line,¹ to negotiate with NSR for acquisition of the ROW as a recreational trail.

¹ SEA indicated in the EA that the ROW may be suitable for other public use following abandonment.

The City has submitted a statement of 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 ROW for trail purposes, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By facsimile filed on October 12, 2006, NSR states that it consents to negotiating with the City for interim trail use.²

Because the City's request complies with the requirements of 49 CFR 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued for the portion of the ROW being sought. 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, NSR may fully abandon that portion of the line subject to the NITU, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As noted above, the City also requested a 180-day public use condition. The City requests that NSR be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment. The City states that the time period is needed to complete negotiations with NSR.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the October 27, 2006 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement.

² NSR states that the City did not include a 0.2-mile segment of the subject line between milepost HG-46.8 and milepost HG-47.0 in its requests. NSR further states that it will advise the Board of its disposition of this segment of the line at a later date.

If a trail use agreement is reached on a portion of the ROW, NSR must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NSR is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, this action 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 served and published in the Federal Register on September 27, 2006, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below for that portion of the ROW described above for a period of 180 days commencing from the October 27, 2006 effective date of the exemption (until April 25, 2007), and subject to the conditions that NSR shall: (1) consult with DENR prior to beginning salvage activities regarding NPDES permitting requirements; and (2) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the affected geodetic station markers by NGS.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, NSR may discontinue service and salvage track and related materials. For the above-described portion of the line, NSR shall keep intact the ROW, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the above-described portion of the line for public use. If an interim trail use/rail banking agreement is executed before April 25, 2007, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. 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 ROW.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by April 25, 2007, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the above-described portion of the line, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary