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SEA

SERVICE DATE – MAY 29, 2007

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-1005X

**Finger Lakes Railway Corp. - Abandonment Exemption -
In Yates County, NY**

BACKGROUND

In this proceeding, Finger Lakes Railway Corp. (FGLK) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of an approximately 4.95-mile line of railroad in Yates County, New York. The rail line extends between milepost 41.35 and milepost 46.3. A map depicting the rail line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

ENVIRONMENTAL REVIEW

FGLK submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. FGLK served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].¹ The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

FGLK states that no traffic has moved over the line since 1995. Accordingly, the proposed abandonment would not adversely impact the development, use, and transportation of energy resources or recyclable commodities; transportation of ozone-

¹ The railroad's environmental and historic reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB-1005X.

depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

According to FGLK, the line is located in a rural area that includes primarily farms and related agricultural businesses. FGLK states that the right-of-way is generally 66-feet wide, but there are two areas where the right-of-way is approximately 150-feet wide. FGLK intends to salvage and reuse the track and materials elsewhere on its rail system.

The National Geodetic Survey (NGS) stated that four geodetic station markers may be affected by the proposed abandonment and requested 90 days notification in advance of any activities that will disturb or destroy these markers in order to plan for their relocation. Accordingly, if the Board grants this abandonment, we recommend that the Board impose a condition requiring FGLK to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

The New York State Department of Environmental Conservation (NYDEC) submitted comments stating that the proposed abandonment is located near state and Federal wetlands. Accordingly, NYDEC recommended that the railroad contact the U.S. Army Corps of Engineers (Corps) in order to determine if permits are required for the proposed project. The U.S. Environmental Protection Agency, Region 2 (USEPA), also submitted comments stating that railroad should contact the Corps if any waterway or wetland might be disturbed. The Corps has submitted comments stating that no Corps' permits will be required as long as no fill or debris is placed within any wetlands or waterways. In subsequent phone consultations with the railroad, NYDEC determined that, as long as salvage activities are conducted on the rail bed and no streams will be disturbed, no state permits will be needed. Because the railroad has asserted that salvage activities will take place only on the right-of-way, the proposed project would have no effect on water resources and no mitigation measures will be recommended. However, if an access road is necessary or work would extend beyond the existing rail bed, the railroad states that the appropriate agencies will be contacted and necessary permits will be obtained.

NYDEC also expressed concern regarding the possible presence of protected species in the area of the proposed abandonment. The U.S. Fish and Wildlife Service (USFWS) submitted comments recommending that the railroad use the USFWS website to determine whether Federally endangered or threatened species or designated critical habitat may be present in the proposed project area. Through its research, the railroad determined that the bald eagle (*Haliaeetus leucocephalus*) and leedy's roseroot (*Sedum integrifolium*), which are both Federally listed threatened species, may occur in the proposed project area. However, during subsequent consultation with NYDEC's Division of Fish, Wildlife and Marine Resources, it was determined that there are no threatened or endangered species in the area of the proposed abandonment. In addition,

the New York Natural Heritage Program submitted comments stating that the proposed rail removal method would not affect wetland plants. Accordingly, the proposed abandonment will not adversely impact habitat of Federally endangered or threatened species, and no mitigation measures are necessary.

The USDA Natural Resources Conservation Service (NRCS) has not submitted comments regarding this proposed abandonment. Because the proposed abandonment is located in a rural area, SEA is sending a copy of this EA to NRCS for its review and comment.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. SEA is providing a copy of this EA to the following groups and agencies for review and comment: NGS; NYDEC; USFWS; and NRCS.

Additional Comments

The Town of Benton (Benton) has expressed concern regarding post-abandonment liability and maintenance problems on the right-of-way. Benton recommended that the property revert back to the adjoining landowner, either by sale or simple transfer.² It is well settled that in conducting environmental review in abandonment cases, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency, e.g., the likely diversion of traffic to other lines or transportation modes and the likely disruptive consequences of removing the track and related structures. Iowa Southern R. Co.-Exemption-Abandonment, 5 I.C.C.2d 496, 501(1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990). Accordingly, SEA does not recommend environmental conditions regarding the post-abandonment use of the right-of-way, and it would not be appropriate or consistent with Board precedent for SEA to recommend a condition regarding responsibility for maintenance or post-abandonment use of the right-of-way. Benton also expressed concern regarding the removal of rail at paved crossings and the railroad has stated that it will coordinate with Benton regarding any rail removal work at paved crossings.

Friends of the Outlet, Inc. also submitted comments and expressed interest in converting the line into a multiple-use trail. The railroad has stated that the line may be an appropriate candidate for a trail, and it is willing to consider alternative public uses for the line. SEA notes that the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned.³ The Trails

² The railroad indicates that the right-of-way remains bound by the original lease with the Yates County Industrial Development Agency.

³ The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal

Act is intended to preserve railroad rights-of-way for future railroad use. Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition. This process allows railroad rights-of-way to be preserved by allowing interim trail use on lines that otherwise would be abandoned.

HISTORIC REVIEW

FGLK submitted an historic report as required by the Board's environmental rules [49 CFR 1105.8(a)] and served the report on the New York State Office of Parks, Recreation and Historic Preservation (State Historic Preservation Office or SHPO) pursuant to 49 CFR 1105.8(c). The only structure on the line that is 50 years old or older is a concrete culvert. Based on available information, the SHPO has submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 CFR 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's web site at <http://www.stb.dot.gov>.

Pursuant to 36 CFR 800.2, SEA conducted a search of the Native American Consultation Database at <http://home.nps.gov/nacd/> to identify Federally recognized tribes, which may have ancestral connections to the project area. The database identified no Federally recognized tribes in Yates County.

CONDITIONS

SEA recommends that the following environmental condition be placed on any decision granting abandonment authority:

1. Finger Lakes Railway Corp. shall notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of

agencies require environmental review.

the line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean who prepared this EA. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-1005X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Christa Dean the environmental contact for this case, by phone at (202) 245-0299, fax at (202) 245-0454, or e-mail at christa.dean@stb.dot.gov.

Date made available to the public: May 29, 2007.

Comment due date: June 13, 2007.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment