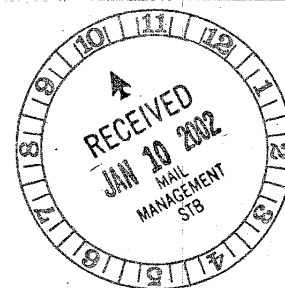


BEFORE THE SURFACE TRANSPORTATION BOARD

Norfolk Southern Railway Company)
-- Abandonment Exemption -- in)
Anderson and Woodford Counties, KY)

) Docket No. AB-290 (Sub-No 192X)



204369

ENTERED
Office of the Secretary

Motion to Extend the Time Period for Negotiation
of an Interim Trail Use/Railbanking Agreement

JAN 10 2002

Par
Public Return

Rails to Trails Conservancy (RTC) hereby moves the Surface Transportation Board (STB or Board) to extend the time period for negotiation of a mutually acceptable interim trail use/railbanking agreement in this proceeding up to and including July 10, 2002. This motion has the consent of Norfolk Southern Railroad Corporation ("NS") (See Letter attached as Exhibit A).

By decision served February 7, 2001, the Rails to Trails Conservancy (RTC) was recognized as the negotiating party, under the National Trails System Act, 16 U.S.C. § 1247(d), to negotiate with NS for the use of the subject right-of-way, which extends from M.P. 0.7-LL at Lawrenceburg, to M.P. 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) (Trails Act).¹ By decision served on July 13, 2001, which is attached as Exhibit B, this Board extended the NITU until January 10, 2002.

RTC has been actively negotiating with NS and is close to reaching an interim trail use/railbanking agreement with the railroad. However, several issues relating to such an agreement have yet to be resolved regarding liability protection for the bridge structures and funding for implementation. Consequently, RTC will need more time in which to negotiate a trail use agreement with the railroad. In order to successfully preserve this corridor for interim trail

¹ Norfolk Southern Railway Company -- Abandonment Exemption -- in Anderson and Woodford Counties, KY, Dkt. No. AB-290 (Sub-No. 192X), served Feb. 7, 2001.

use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), it is necessary for the negotiation period under the NITU to be extended up to and including July 10, 2001. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990) (extensions of time promote the establishment of trails and railbanking consistent with the National Trails System Act).

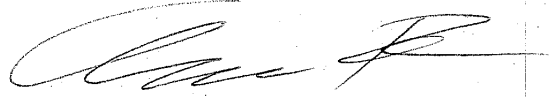
Since the issuance of the NITU, NS at all points has maintained an intent to transfer the line in question intact for interim trail use. The railroad has not sold, or offered for sale, any parcels of land that would interfere with interim trail use and railbanking of the portion of the corridor that is covered by the NITU. The line remains intact and throughout the period, the railroad has been negotiating with the railroad for the sale of the corridor intact. Accordingly, the Board retains jurisdiction to further extend the NITU to continue bona fide and active negotiations for interim trail use of the line.

In similar instances, this Board has reopened proceedings to permit the issuance of orders implementing section 8(d) for rail lines.² The STB's authority to extend a NITU was upheld in Birt v. STB, 90 F.3d 580 (D.C. Cir. 1996). Here the parties merely seek an extension in the period for negotiation provided in a previously-issued NITU. Such an extension will promote and further the purposes of the Trails Act.

For the reasons stated, RTC requests that an 180-day extension of the NITU negotiation period be granted through July 10, 2002.

² See, e.g., Missouri-Kansas-Texas Railroad--Abandonment--in Pettis and Henry Counties, MO, Dkt. No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

Respectfully submitted,



Andrea C. Ferster
General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W., 10th Fl.
Washington, D.C. 20036
(202) 974-5142

January 9, 2002

CERTIFICATE OF SERVICE/

I hereby certify that on this 10 day of January, 2002, I have served a true and accurate copy of the foregoing motion on the following party by first-class mail, postage pre-paid:

James R. Paschall, General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510-9241



Andrea C. Ferster

Ex A



Norfolk Southern Railway Company
Law Department
Three Commercial Place
Norfolk, Virginia 23510-2191

James R. Paschall
General Attorney

(757) 629-2759
fax (757) 533-4872

January 8, 2002

via fax 202-331-9680
Andrea C. Ferster, General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W. 10th Fl.
Washington, D.C. 20036

Re: STB Docket No. AB-290 (Sub-No. 192X), Norfolk Southern Railway
Company--Abandonment Exemption--in Anderson and Woodford Counties, KY

Dear Ms. Ferster:

Norfolk Southern Railway Company consents to the request of the Rails to Trails Conservancy to the Surface Transportation Board, to be presented this week, for a 180-day extension of time for the Trail Use Negotiation Condition in this matter. We authorize you to notify the STB of our consent, along with your request.

Norfolk Southern Railway Company (NSR), has not consummated the abandonment of the line that is the subject of this proceeding and has continued to negotiate with the Rails to Trails Conservancy on an agreement to transfer the line for interim trail use. Although we expect to reach an agreement, NSR's consent to extend the negotiation condition alone does not guarantee that a final agreement must be reached.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J R Paschall".

James R. Paschall

cc: Mr. John T. Moon

Ex.B.

32009
DO

SERVICE DATE - JULY 13, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: July 12, 2001

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001.

On July 9, 2001, RTC filed a motion to extend the negotiating period through January 10, 2002. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS and is close to reaching an agreement but that several issues relating to an agreement have yet to be resolved.

Where, as here, the carrier has not consummated the proposed abandonment and is willing to continue trail use negotiations, the negotiating period may be extended.¹ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through January 10, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

STB Docket No. AB-290 (Sub-No. 192X)

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through January 10, 2002.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary