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SEA

SERVICE DATE – OCTOBER 10, 2008

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-369 (Sub-No. 7X)

**Buffalo & Pittsburgh Railroad, Inc. - Abandonment Exemption –
In Erie and Cattaraugus Counties, NY**

BACKGROUND

In this proceeding, the Buffalo & Pittsburgh Railroad, Inc. (BPRR) 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 27.6-mile rail line in Erie and Cattaraugus Counties, New York. The line extends between milepost 8.4 in Orchard Park and milepost 36.0 in Ashford. If the notice becomes effective, BPRR will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way. A map depicting the rail line in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

BPRR 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. BPRR 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

The line has not generated any traffic for at least two years and any overhead traffic on the line can be rerouted over other lines. Accordingly, the proposed abandonment would not adversely impact the development, use, and transportation of energy resources or recyclable commodities; transportation of ozone-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.

¹ The 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-369 (Sub-No. 7X).

Salvage Activities

According to BPRR, the rail line is located in an area that is predominantly wooded and rural; however, the line also passes through some small towns and villages. In addition, the line crosses a number of waterways, including Crump Brook, Cazenovia Creek, Spring Brook, Graff Brook, Cattaraugus Creek, and Buttermilk Creek. The proposed abandonment would also allow for the removal of approximately 20 at-grade crossings.

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. In the event that abandonment authority is granted in this proceeding, BPRR states that salvage work would include surface work only and there would be no disturbance of subsurface resources.

The National Geodetic Survey (NGS) has identified 39 geodetic station markers that may be affected by the proposed abandonment and has requested notification at least 90 days in advance of any activities that would disturb or destroy these markers in order to plan for their relocation. Accordingly, we recommend that BPRR consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

In consultation with BPRR, the New York State Department of Environmental Conservation (New York DEC) advised that no contaminants should be left behind in the ballast materials and that railroad ties cannot be used in water environments. The U.S. Environmental Protection Agency's Region 2 Office (USEPA) also submitted comments expressing concerns regarding the demolition of chemically treated railroad ties. BPRR has stated that it intends to comply with all applicable laws and regulations regarding the removal, clean up and disposal of track materials.

There are no Federally-listed threatened or endangered species in Erie County. However, Clubshell (*Pleurobema clava*), a Federally-listed endangered species, and Rayed bean (*Villosa fabalis*), a candidate species, may be found in Cattaraugus County. Accordingly, SEA has included the U.S. Fish and Wildlife Service's New York Field Office on the service list for this proceeding to ensure that it receives a copy of this EA.

The New York DEC, Division of Fish, Wildlife & Marine Resources' Natural Heritage Program indicated that rare or state-listed animals and plants and other significant habitats may occur in the area of the proposed abandonment. Accordingly, we recommend that, prior to the commencement of any salvage activities, BPRR consult with the appropriate New York DEC regional office regarding rare or state-listed animals and plants and other significant habitats that may be affected by the proposed abandonment and comply with its reasonable requirements.

In addition, the New York DEC submitted comments stating that part of the line is located in a state-protected wetland and that BPRR will likely need a Freshwater Wetland Permit. The USEPA also submitted comments advising that wetland resources are located in the

area of the proposed abandonment. Accordingly, we recommend that, prior to the commencement of any salvage activities, BPRR consult with the USEPA and the appropriate New York DEC regional office regarding wetland resources that may be affected by the proposed abandonment and comply with the reasonable requirements of those agencies. We also recommend that BPRR report the results of those consultations in writing to SEA.

The U.S. Corps of Engineers reviewed the proposed abandonment and determined that it would not involve any discharge of dredged or fill material into Federal, jurisdictional wetlands or waters. BPRR has stated that it would ensure that proper erosion control measures are used to prevent unintentional discharges from entering waterways.

According to the New York State Division of Coastal Resources, the line is not located within the New York State coastal zone. Accordingly, state coastal management consistency certification is not required.

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 USFWS for review and comment.

Trails Use

On September 22, 2008, the New York State Office of Parks, Recreation and Historic Preservation filed a request for a public use condition and a request for issuance of a notice of interim trail use. In a response filed on September 26, 2008, BPRR stated that it is willing to negotiate with the New York State Office of Parks, Recreation and Historic Preservation for interim trail use and railbanking. 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.² The Trails 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

BPRR believes that the line was originally constructed by the Buffalo, Rochester, and Pittsburgh Railroad in the early 1900s. As stated above, there are approximately 40 bridges on the line and a number of those bridges are 50 years old or older. The New York State Historic Preservation Office (State Historic Preservation Office or SHPO) reviewed the Historic Report prepared by BPRR and has requested additional information, including a survey of archaeological resources in the project area. Accordingly, we are recommending a condition

² 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 agencies require environmental review under NEPA.

requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

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 indicated that the following Federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: Seneca Nation of New York; Tonawanda Band of Seneca Indians of New York; and Cayuga Nation of New York. Accordingly, SEA is sending a copy of this EA to those tribes for review and comment.

CONDITIONS

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

1. Buffalo & Pittsburgh Railroad, Inc. 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.
2. Prior to the commencement of any salvage activities, Buffalo & Pittsburgh Railroad, Inc. shall consult with the appropriate regional office of the New York Department of Environmental Conservation (New York DEC) regarding rare or state-listed animals and plants and other significant habitats that may be affected by the proposed abandonment and comply with New York DEC's reasonable requirements.
3. Prior to the commencement of any salvage activities, Buffalo & Pittsburgh Railroad, Inc. (BPRR) shall consult with the U.S. Environmental Protection Agency's Region 2 Office and the appropriate regional office of the New York Department of Environmental Conservation regarding wetland resources that may be affected by the proposed abandonment and shall comply with the reasonable requirements of those agencies. BPRR shall report the results of those consultations in writing to SEA.
4. Buffalo & Pittsburgh Railroad, Inc. (BPRR) shall retain its interest in and shall take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. BPRR shall report back to the Board's Section of Environmental Analysis regarding any consultations with the New York State Historic Preservation Office and the public. BPRR may not file its consummation notice or initiate any salvage activities related to abandonment

(including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of 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 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 Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, 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-369 (Sub-No. 7X) 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: October 10, 2008.

Comment due date: October 27, 2008.

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

Anne K. Quinlan
Acting Secretary

Attachment