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OEA

SERVICE DATE – AUGUST 14, 2015

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB 1032X

**Nebraska, Kansas & Colorado Railway
– Abandonment Exemption –
Decatur, Norton, and Phillips Counties, KS and
Harlan County, NE
And
Discontinuance of Trackage Rights in Norton County, KS**

BACKGROUND

In this proceeding, the Nebraska, Kansas & Colorado Railway, L.L.C. (“NKCR”) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 to abandon a 57.31 miles of rail line located: 1) between milepost 3.35, near Orleans, Harlan County, NE and milepost 29.84, at Almena, Norton County, KS; 2) between milepost 47.23, at Reager, Norton County, KS, and milepost 78.05, at Oberlin, Decatur County, Kansas; and 3) the Northern Spur, 1.65 miles of spur track and sidings, located in Norton, Norton County, KS (the “lines”). This proceeding also includes a request to discontinue trackage rights over 17.7 miles of spur track and sidings owned by Kyle Railroad located between Almena and Oronoque Junction, Norton County, Kansas. A map depicting this proceeding is appended to this Environmental Assessment (EA).

The lines are located in a rural farmland setting. They include seven bridges in Nebraska and 38 bridges in Kansas. NKCR indicates that the rail lines do not contain federally granted rights-of-way. If the notice becomes effective, NKCR would be able to salvage track, ties, and other railroad appurtenances within the rights-of-way of the abandoned lines.

ENVIRONMENTAL REVIEW

NKCR 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. NKCR 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 C.F.R. § 1105.7(b)].¹ The

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

Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

NKCR states that there has been no overhead or local traffic on the lines for well over two years and any future overhead traffic can be rerouted over other lines. No maintenance has been conducted along the lines for some time. 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.

Salvage Activities

Impacts from salvage and disposal of rail lines typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and re-grading of the right-of-way. Salvage may be performed within the right-of-way, or if necessary, via construction of new access points to the right-of-way.

NKCR received comments from the Nebraska Department of Environmental Quality (NEDEQ). NEDEQ cautions that during any salvage activities, railroad ties must not be chipped or buried as they contain treated wood. They add that any waste from what is found or generated as a result of salvage operations must be disposed of as outlined in Nebraska Titles 128 and 132. NKCR advises that the project may require various permits related to fugitive dust, construction storm water, water quality and waste disposal. OEA has not heard from the Kansas DEQ regarding potential impacts of the proposed abandonment. However, due to the concerns raised by NEDEQ, OEA recommends a condition requiring NKCR to consult with both the Nebraska and Kansas DEQ prior to conducting salvage operations.

The Kansas City District of the Army Corps of Engineers (ACOE) provided a response to the applicant's environmental report. In its letter to NKCR, the Kansas City District states that the proposed abandonment, as described, is not an action that would result in harm to the waters of the United States over which the ACOE has jurisdiction. To date, no comment has been received from the Nebraska ACOE District. OEA is therefore recommending a condition for NKCR to consult with the Nebraska ACOE to insure that their concerns are appropriately addressed.

NKCR provided copies of its environmental and historic reports to Decatur, Norton, and Phillips counties in Kansas and Harlan County in Nebraska. Harlan County responded indicating its support of the proposed abandonment. None of the other counties have provided comments.

NKCR contacted the Natural Resources Conservation Service (NRCS) in both Nebraska and Kansas regarding possible impacts to prime farmlands. The Kansas office of NRCS has provided a response stating that the proposed action is exempt from the Farmland Protection Act.

As of the date of this EA, no response has been received from the NRCS office in Nebraska.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

OEA has not received responses from the National Geodetic Survey; the U.S. Environmental Protection Agency; the U.S Fish and Wildlife Service; Nebraska ACOE and NRCS; the Kansas DEQ

nor any of the affected counties in Nebraska regarding potential environmental impacts from the proposed abandonment. OEA is therefore sending a copy of this EA to the above entities for review and comment.

HISTORIC REVIEW

NKCR submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and provided copies of the report to the Nebraska and Kansas State Historical Societies (State Historic Preservation Offices or SHPOs) pursuant to 49 C.F.R. § 1105.8(c) and Section 106 of the National Historic Preservation Act.

Both the Nebraska and Kansas SHPOs provided the opinion that the proposed abandonment would not affect historic properties listed in or eligible for listing in the National Register of Historic Places. Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we concur with the determination of the SHPO that no historic properties listed in or eligible for inclusion in the National Register would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. The documentation for this finding, as specified at 36 C.F.R. § 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 website at www.stb.dot.gov.

The Nebraska and Kansas SHPOs requested their offices be contacted immediately if salvage activities result in the inadvertent discovery of human remains. OEA therefore recommends a condition requiring the applicant to contact the applicable SHPO if human remains are discovered during salvage operations in either state.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have current or ancestral connections to the project area.² The following tribes were listed: Northern Arapaho Tribe and Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Northern Cheyenne Tribe, Montana; and the Pawnee Nation of Oklahoma. A Copy of this EA is being providing to the above tribes for comment.

² Native American Consultation Database, <http://grantsdev.cr.nps.gov/Nagpra/NACD/> (last visited August 10, 2015).

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Prior to the commencement of any salvage activities, the Nebraska, Kansas & Colorado Railway, L.L.C shall consult with the Kansas and Nebraska Department of Environmental Quality regarding fugitive dust, construction storm water, water quality and waste disposal.**
- 2. Prior to the onset of salvage activities, the Nebraska, Kansas & Colorado Railway, L.L.C shall consult with the Nebraska Army Corps of Engineers regarding proposed abandonment activities.**
- 3. In the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, the Nebraska, Kansas & Colorado Railway, L.L.C will immediately cease all work and notify the Office of Environmental Analysis (OEA), interested Federally recognized tribes, and the Kansas or Nebraska SHPO. OEA shall then consult with the SHPO, interested Federally recognized tribes and the Nebraska, Kansas & Colorado Railway, L.L.C to determine whether any mitigation measures are necessary.**

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed and if the recommended conditions are imposed, abandonment of the lines will 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 lines, the rights-of-ways may be suitable for other public use. A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 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 trails use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of 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 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPAGAC 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 Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Catherine Nadals, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 1032 (Sub-No. 0X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Catherine Nadals, the environmental contact for this case, by phone at (202) 245-0293, fax at (202) 245-0454, or e-mail at nadalsc@stb.dot.gov.

Date made available to the public: August 14, 2015.

Comment due date: August 31, 2015.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment