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SERVICE DATE – FEBRUARY 23, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1076X

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CLARK, PIKE, AND MONTGOMERY COUNTIES, ARK.

Decided: February 22, 2012

This decision reopens the proceeding to impose two environmental conditions.

Caddo Valley Railroad Company (CVRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the portion of the Norman Branch Line between milepost 447, near Antoine, and milepost 479.2, at the end of the line near Birds Mill, a distance of 32.2 miles, in Clark, Pike, and Montgomery Counties, Ark. (the notice segment).¹ Notice of the exemption was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,125-26) (November 2011 notice). The November 2011 notice stated that the exemption would become effective on December 16, 2011, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by November 28, 2011.

On November 28, 2011, Southwest Arkansas Regional Intermodal Authority (Intermodal Authority) filed a formal expression of intent to file an OFA to purchase both the notice segment and the petition segment of the Norman Branch. This filing automatically stayed the effective date of the exemption in this proceeding for 10 days, until December 26, 2011. See 49 C.F.R. § 1152.27(c)(2)(i). In its filing, Intermodal Authority simultaneously requested that CVRR provide Intermodal Authority certain information relevant to its OFA, as contemplated under 49 C.F.R. § 1152.27(a).

By decision served on December 13, 2011 (December 2011 decision), the Board extended the deadline for filing an OFA in this proceeding until February 24, 2012 (10 days after service of a Board decision for the petition segment) so that that deadline would coincide with the OFA deadline for the petition segment. The effective date of the exemption also was postponed until 10 days after the due date for filing an OFA (until March 5, 2012).

¹ CVRR concurrently filed, in Docket No. AB 1076 (Sub-No. 1X), Caddo Valley Railroad Company—Abandonment Exemption—in Pike and Clark Counties, Ark., a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon the adjoining segment of the Norman Branch between milepost 429.45, near Gurdon, and milepost 447, near Antoine, a distance of 17.55 miles, in Pike and Clark Counties, Ark. (the petition segment). A decision granting the petition was served on February 14, 2012.

See 49 C.F.R. § 1152.27(c)(2). By decision served on January 18, 2012, the Board denied CVRR's request for reconsideration of the Board's December 2011 decision.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on November 21, 2011. In the EA, OEA indicated that CVRR served a copy of the historic report on the Department of Arkansas Heritage (State Historic Preservation Officer, or SHPO) pursuant to 49 C.F.R. § 1105.08(c). OEA stated that it received comments from the SHPO indicating that it needed additional information before determining if the rail line may be potentially eligible for listing in the National Register of Historic Places (Historic Places). In a follow-up telephone conversation on November 14, 2011, the SHPO informed OEA that its review was still ongoing. Accordingly, in the EA, OEA recommended that a condition be imposed requiring that CVRR: (1) 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 that are eligible for listing or are listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed; (2) report back to OEA regarding any consultations with the SHPO and the public; and (3) refrain from filing its consummation notice or initiating 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.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database (Database) at <http://home.nps.gov/nacd/> to identify any Federally recognized tribes that may have ancestral connections to the project area. According to OEA, the Database indicated that the Osage Tribal Council and the Osage Nation may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way. Accordingly, OEA sent a copy of the EA to these tribes for their review and comment.

Comments on the EA were due by December 7, 2011. Based on the comments received, as discussed below, OEA recommends that the previously recommended Section 106 historic preservation condition not be imposed and that two new conditions be imposed.

By letter dated November 29, 2011, the SHPO states that it has determined that the proposed abandonment would have no adverse effect on National Register listed or eligible properties affected by this undertaking. Therefore, based on the information provided, OEA now recommends that the Section 106 historic preservation condition previously recommended in the EA not be imposed.

By letter dated November 2, 2011, the U.S. Fish and Wildlife Service, Arkansas Ecological Services Office (USFWS) indicates that eight Federally listed threatened and endangered species are within close range of the proposed abandonment. They include: the Quachita rock-pocketbook (*Arkansia wheeleri*), the Pink mucket (*Lampsililis abrupta*), the Red cockaded woodpecker (*Picoides borealis*), the winged mapleleaf (*Quadrula fragosa*), the Florida

panther (Felis concolor coryi), the scaleshell (Leptodea leptodon), the Arkansa fatmucket (Lampsilis powellii), and the piping plover (Charadrius melodus). USFWS states that any sediment generated during the railroad's salvage process could have direct effects on these species and/or their habitat, and recommends that CVRR use best management practices during salvage operations. According to OEA, CVRR has stated that it intends to salvage the rail, ties, and track material, and possibly the upper layer of ballast, but would leave the roadbed, bridges and subgrade, including any subgrade structures, intact. USFWS also indicates that its comments do not include an "effect determination" or an opinion as to whether the salvage operations would be considered a "take" on the above-listed protected species and their habitat under Section 7 of the Endangered Species Act, 16 U.S.C. § 1535. Therefore, to further address this issue, OEA recommends a new condition requiring that CVRR: (1) consult with OEA and USFWS to develop appropriate mitigation measures, if necessary; and (2) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation process is complete and the Board has removed this condition.

By letter dated November 14, 2011, from the State Clearinghouse, the Arkansas Natural Resources Commission's Technical Review Committee (NRC) indicates that it reviewed the proposed abandonment pursuant to Section 404 of the Clear Water Act, Section 102(2) of the National Environmental Policy Act, and the Arkansas Project Notification and Review System. NRC states that it supports the proposed abandonment provided the following measures are taken: (1) that best management practices be used during salvage operations to avoid, minimize, or mitigate any impacts to streams and wetlands, including any demolition or repair work that may be needed at associated crossings; and (2) that the necessary permits be obtained for such work. Accordingly, to address NRC's concerns, OEA recommends a new condition requiring that CVRR contact NRC prior to commencement of any salvage activities on this project concerning removal and salvage methods and any work within the designated floodway, including possible impacts to wetlands, streams, and stream banks.

Accordingly, the Section 106 historic preservation condition previously recommended by OEA in the EA will not be imposed, and the two new conditions recommended by OEA will be imposed.

As conditioned, this decision 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 November 2011 notice, exempting the abandonment of the line described above, is subject to the conditions that CVRR shall: (1) consult with OEA and USFWS to develop appropriate mitigation measures, if necessary, and refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation process is complete and the Board has removed this condition; and (2) contact NRC prior to commencement of any salvage activities on this project concerning removal and salvage methods and any work within the designated floodway, including possible impacts to wetlands, streams, and stream banks.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.