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SERVICE DATE – APRIL 26, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 449 (Sub-No. 3X)

WESTERN KENTUCKY RAILWAY, LLC – ABANDONMENT EXEMPTION – IN
WEBSTER, UNION, CALDWELL AND CRITTENDEN COUNTIES, KY.

Decided: April 25, 2011

Western Kentucky Railway, LLC (WKRL) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon all 5 of its remaining lines of railroad in Webster, Union, Caldwell, and Crittenden Counties, Ky.¹ Notice of the exemption was served and published in the Federal Register on January 20, 2011 (76 Fed. Reg. 3,696). The exemption became effective on February 26, 2011.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on February 1, 2011, requesting comments by February 16, 2011. By decision and notice of interim trail use or abandonment service on February 25, 2011, the Board imposed environmental conditions recommended by OEA, requiring WKRL to: (1) consult with the U.S. Army Corps of Engineers (USACE) regarding its requirements and, if applicable, comply with any reasonable requirements of the USACE; and, (2) consult with the National Geodetic Survey and notify it at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.² These 2 environmental conditions, the trail use condition, and the public use condition remain in effect.

On March 29, 2011, OEA received a late-filed comment from George Strack, Tribal Historic Preservation Officer (THPO) for the Miami Tribe of Oklahoma. The THPO indicated that while it was unaware of any cultural or historic sites in the area of the proposed abandonment, the Miami Tribe of Oklahoma requests that it be contacted in the event any human remains or Native American cultural objects are found during the salvage process. Accordingly, OEA recommends that the following new condition be added:

¹ The lines are described as follows: (1) between milepost 48.0 at Dekoven and milepost 62.5 at Blackford; (2) between milepost 0.0 at Blackford and milepost 3.8 at Pyro Wye and between milepost 3.8 and milepost 8.5 at Clay; (3) between milepost 0.0 at Costain Prep Plant and milepost 9.5 at Providence; (4) the Wheatcroft loop track, which connects line 2 and line 3 described above, between milepost 0.8 +/- on line 3 and running north towards milepost 5.6 +/- and milepost 6.0 +/- on line 2; and (5) between milepost 0.0 at Costain Prep Plant and milepost 5.5 at Caney Creek.

² The February 25, 2011 decision and notice also implemented trail use and public use conditions.

In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, WKRL will immediately cease all work and notify OEA, the THPO, other interested federally recognized tribes, and the State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the THPO, other interested federally recognized tribes, the SHPO, WKRL, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Therefore, the proceeding will be reopened and the newly recommended condition 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 notice served and published in the Federal Register on January 20, 2011, exempting the abandonment of the line described above, is subject to the additional condition that in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, WKRL will immediately cease all work and notify OEA, the THPO, other interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the THPO, other interested federally recognized tribes, the SHPO, WKRL, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. This decision is effective on its date of service.

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