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SERVICE DATE - APRIL 7, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 204X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT  
EXEMPTION--IN MECKLENBURG COUNTY, NC

Decided: April 5, 1999

Norfolk Southern Railway Company (NS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 2.87 miles of its line of railroad between milepost R-0.13 and milepost R-3.0 in Charlotte, Mecklenburg County, NC. Notice of the exemption was served and published in the Federal Register on March 9, 1999 (64 FR 11530-31). The exemption is scheduled to become effective on April 8, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 12, 1999. In the EA, SEA states that the National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring NS to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

By petition filed March 16, 1999, the City of Charlotte (City) requested issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with NS for acquisition of the right-of-way for use as a trail. The City submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed March 18, 1999, NS indicated its willingness to negotiate with the City for interim trail use.

The City's request complies with the requirements of 49 CFR 1152.29 and NS is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NS may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 of exemption served and published in the Federal Register on March 9, 1999, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing April 8, 1999 (until October 5, 1999), and subject to the condition that NS consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by October 5, 1999, interim trail use may be implemented. If no agreement is reached by that time, NS may fully abandon the line.
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary