

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 385X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
KALAMAZOO, MICH.

Decided: October 12, 2016

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 0.1-mile rail line, between mileposts IJ 44.6 and IJ 44.7, in Kalamazoo, Mich. (the Line). Notice of the exemption was served and published in the Federal Register on September 13, 2016 (81 Fed. Reg. 62,967).¹ The exemption is scheduled to become effective on October 13, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 16, 2016. In the EA, OEA states that the National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment on any geodetic station markers that may be present in the project area. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with NGS prior to beginning any salvage activities.

According to OEA, the Environmental Analysis Branch of the U.S. Army Corps of Engineers (Corps) states that the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps indicate that floodplains exist in the project area. The Corps notes that effects on floodplains could occur during salvage if the ground surface elevation within the floodplains were to change as a result of salvage activities. The Corps recommends that the project be coordinated with county officials and the State of Michigan regarding the applicability of a floodplain permit to ensure compliance with county and state floodplain management acts and regulations. If salvage is limited to the removal of rails and ties, the Corps notes that salvage would not be expected to affect floodplains. Further, the Corps submitted additional comments stating that the removal of a bridge over Portage Creek could result in increased flood elevations downstream if the bridge is holding back flood flows. The Corps notes that FEMA flood maps indicate that some constriction is present at the location of the bridge, which may be due to the presence of the bridge deck, the creek banks, the rail bed, or some combination of those factors. The Corps recommends that hydraulic modeling be used to assess the potential for adverse effects from the removal of the bridge.

¹ Grand Elk Railroad, L.L.C. joined in filing this notice of exemption to obtain Board authorization to discontinue service over the same rail line segment. Grand Elk R.R.—Discontinuance of Service Exemption—in Kalamazoo, Mich., Docket No. AB 1246X.

OEA states that NSR intends to convey the Line to a salvage company for salvage. OEA states that NSR expects that salvage would consist of removing rail, ties, related materials, and the bridge over Portage Creek. To address the Corps' concerns regarding potential impacts to floodplains, OEA recommends that a condition be imposed requiring NSR to consult with the Corps prior to beginning any salvage activities regarding the potential for impacts to floodplain management resulting from the removal of the Portage Creek bridge and to comply with the recommendations of the Corps to avoid or mitigate any impact.

OEA further states that the Line is located in a heavily developed and largely industrial area within the City of Kalamazoo. The U.S. Fish and Wildlife Service (USFWS) submitted comments identifying federally listed threatened and endangered species that may be located in the vicinity of the Line, and OEA conducted a search of the USFWS Information, Planning, and Conservation System to identify protected species. USFWS and OEA identified four protected species known or thought to occur in Kalamazoo County, Michigan, but OEA notes that the Line is not located in or near critical habitat for any of the species. Based on the information submitted, including OEA's review of satellite imagery of the project area, OEA states that it is unlikely that suitable habitat exists within the project area for any of the protected species. Because salvage activities would be limited in scope and confined to an existing rail right-of-way in a developed area, OEA states that the proposed abandonment would not adversely affect any species that may be present. However, because the Line crosses a waterway and adjacent areas where wetlands may exist, OEA recommends that a condition be imposed requiring NSR to consult with USFWS prior to conducting salvage activities and comply with the recommendations of USFWS avoiding or mitigating potential impacts to protected species.

Further, OEA states that the Michigan State Historic Preservation Office (SHPO) submitted comments stating that the proposed abandonment would have no effect on historic properties listed in or eligible for inclusion in the National Register of Historic Places. The SHPO requests that, should the project plans change or should artifacts or remains be encountered during salvage activities, NSR should cease work and report to the SHPO immediately. OEA states that it has reviewed the SHPO's record and information and concurs with the SHPO's comments. OEA therefore recommends that a condition be imposed requiring NSR to cease abandonment activities and notify the SHPO and OEA in the event that unanticipated archaeological sites or artifacts are discovered.

Comments to the EA were due October 3, 2016. In the Final EA, issued October 4, 2016, OEA states that NSR informed OEA that it consulted further with USFWS during the comment period, and USFWS informed NSR that it does not have any concerns regarding the potential impact of the proposed abandonment to federally listed threatened and endangered species. OEA also received one comment from USFWS stating that no federally listed threatened or endangered species, or species proposed for listing, are known or thought to be present in the project area. OEA therefore recommends that the previously recommended condition requiring NSR to consult with USFWS prior to commencing activities not be imposed. Accordingly, three of the conditions recommended by OEA in the EA will be imposed.

Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, 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 September 13, 2016, exempting the abandonment of the Line described above is subject to the conditions that: (1) prior to commencement of any salvage activities, NSR shall consult with NGS, and if NGS identifies geodetic station markers that may be affected by the proposed abandonment, NSR shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for the possible relocation of the markers; (2) prior to commencement of any salvage activities, NSR shall consult with the Corps regarding the potential impact of salvage activities on floodplain management and shall comply with the reasonable recommendations of the Corps, and NSR shall report the results of any consultations with the Corps to OEA; and (3)(a) in the event that any unanticipated archaeological sites or associated artifacts are discovered during salvage activities, NSR will immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b); and (b) OEA shall then consult the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. This decision is effective on its service date.

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