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SERVICE DATE – LATE RELEASE OCTOBER 10, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 338X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
BEAUFORT COUNTY, N.C.

Decided: October 10, 2012

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 U.S.C. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.76 miles of rail line between milepost WL 25.94 (at the line's crossing of Highway 306) and milepost WL 26.70, in Aurora, Beaufort County, N.C. Notice of the exemption was served and published in the Federal Register on September 11, 2012 (77 Fed. Reg. 55,898). The exemption is scheduled to become effective on October 11, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 14, 2012. In the EA, OEA indicated that the U.S. Environmental Protection Agency (EPA) submitted the following comments: (1) the map setting forth the mileposts involved in the proposed abandonment did not depict the presence of Whitehurst Creek's confluence with a larger unnamed surface water body near milepost WL 26.70; therefore, the EPA was unable to determine whether there is a potential for a Clean Water Action (CWA) under Section 402 of the Clean Water Act; (2) although NSR stated that there would be no direct discharges into CWA-defined waters, a potential for storm water related runoff might trigger a CWA Section 402 Storm Water Permit; (3) the EPA noted that its CWA implementation had been delegated to the North Carolina Department of Environment and Natural Resources (NC-DENR); and (4) the EPA also encouraged NSR to contact the Town of Aurora's department responsible for implementing the Municipal Separate Storm Sewer Systems (MS4) program, because the Town of Aurora is required to obtain a MS4 permit from the state.

According to OEA, the NC-DENR Water Quality Division indicated that, based on the information provided, there would be no impacts to jurisdictional resources and, as such, no permit is required. Accordingly, OEA recommended that a condition be imposed requiring NSR, prior to the commencement of any salvage activities, to consult with the Town of Aurora regarding any abandonment related activities that may impact its MS4 program.

Comments to the EA were due by September 28, 2012. OEA states in its final EA that new comments were received. According to OEA, in a letter dated September 27, 2012, the U.S. Fish and Wildlife Service, Raleigh Field Office (USFWS) notes that: (1) the proposed abandonment is not likely to adversely affect any federally listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under

the Endangered Species Act at these sites, and the USFWS believes that the requirements of Section 7(a)(2) of the Endangered Species Act have been satisfied for the proposed abandonment; (2) the USFWS is concerned about potential impacts that the proposed abandonment might have on aquatic species that are highly susceptible to sedimentation; therefore, the USFWS recommends that all practicable measures be taken to avoid adverse impacts to aquatic species, including implementation of directional boring methods and stringent sediment and erosion control measures and further notes that an erosion and sedimentation control plan should be submitted to, and approved by, the North Carolina Division of Land Resources, Land Quality Section prior to initiating salvage activities; and (3) the North Carolina Wildlife Resources Commission has developed a Guidance Memorandum to address and mitigate secondary and cumulative impacts to aquatic and terrestrial wildlife resources and water quality. OEA recommends three new conditions that address the concerns of USFWS.

OEA now recommends that the condition previously recommended in the EA, as well as the three additional conditions, be imposed upon any decision granting abandonment authority. Accordingly, the conditions recommended by OEA will be imposed as set forth below in the ordering paragraphs. 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 11, 2012, exempting the abandonment of the line described above is subject to the conditions that, prior to commencement of any salvage activities, NSR shall consult with: (1) the Town of Aurora regarding any abandonment related activities that may impact its MS4 program; (2) an appropriate individual at the USFWS Raleigh Field Office responsible for determining potential sedimentation impacts to aquatic species; (3) the North Carolina Division of Land Resources, Land Quality Section to determine the need to prepare an erosion and sedimentation control plan; and (4) the USFWS Raleigh Field Office regarding ways to mitigate secondary and cumulative impacts to aquatic and terrestrial wildlife resources and water quality pursuant to the guidance found at <http://www.fws.gov/raleigh>.
3. This decision is effective on its service date.

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