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SERVICE DATE – JULY 27, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 117 (Sub-No. 8X)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN GRUNDY COUNTY, ILL.

Decided: July 26, 2012

Elgin, Joliet & Eastern Railway Company (EJ&E) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 2.26-mile line of railroad, known as the Goose Lake Segment, extending from milepost 27.91 to the end of the track at milepost 30.17 near Morris, in Grundy County, Ill. Notice of the exemption was served and published in the Federal Register on June 28, 2012 (77 Fed. Reg. 38,712-13). The exemption is scheduled to become effective on July 28, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on July 3, 2012. In the EA, OEA has recommended that two conditions be imposed on any decision granting abandonment authority. First, OEA states that the U.S. Fish and Wildlife Service (USFWS) has provided information that the federally-listed threatened Eastern prairie fringed orchid and the endangered Indiana bat are found in Grundy County, and may be present in the proposed abandonment area. OEA also states that, due to the temporary nature of the proposed salvage activities and the plans to increase the quality of wetland and migratory bird habitat following the proposed abandonment, it believes that potential impacts to these species could be appropriately mitigated through consultation with the USFWS pursuant to Section 7 of the Endangered Species Act. Therefore, OEA recommends that, prior to commencement of any salvage activities, EJ&E be required to consult with USFWS, Rock Island Field Office, to discuss the abandonment's potential impacts to the federally listed threatened or endangered species that may occur in the vicinity of the line proposed for abandonment, that EJ&E be required to report the results of this consultation to OEA in writing, and should any potential impacts be identified, that EJ&E be required to consult with OEA and USFWS to develop appropriate mitigation measures.

Second, OEA states in the EA that the U.S. Army Corps of Engineers' Rock Island District (Corps) has recommended that EJ&E consult with the Illinois Department of Natural Resources' (ILDNR) Office of Water Resources to determine whether a floodplain development permit is required for the proposed abandonment. Accordingly, OEA recommends that, prior to commencement of any salvage activities, EJ&E be required to consult with ILDNR's Office of Water Resources regarding the abandonment's potential impacts to floodplains and comply with the reasonable requirements of ILDNR's Office of Water Resources to mitigate any potential impacts.

OEA issued its final EA on July 19, 2012, noting that no comments to the EA were received by the July 18, 2012 due date and recommending that the two previously recommended environmental conditions be imposed. However, in a supplemental final EA issued on July 24, 2012, OEA now advises that, on July 23, 2012, the Iowa Tribe of Kansas and Nebraska submitted a comment requesting that it be notified if there are any unanticipated discoveries of historic properties, human skeletal remains, or other artifacts during salvage activities. Therefore, OEA recommends that an additional condition be imposed to address concerns regarding unanticipated discoveries during salvage activities. The condition would provide that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, EJ&E be required to immediately cease all work and notify OEA, interested federally recognized tribes and the Illinois Historic Preservation Agency (SHPO). OEA would then consult with the SHPO, interested federally recognized tribes, EJ&E and other consulting parties, if any, to determine if additional mitigation measures are necessary.

The three conditions recommended by OEA in the EA and the supplemental final 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 June 28, 2012, exempting the abandonment of the line described above, is subject to the conditions that (1) prior to commencement of any salvage activities, EJ&E shall consult with USFWS, Rock Island Field Office, to discuss the abandonment's potential impacts to the federally listed threatened or endangered species that may occur in the vicinity of the line proposed for abandonment, report the results of this consultation to OEA in writing, and should any potential impacts be identified, consult with OEA and USFWS to develop appropriate mitigation measures; (2) prior to commencement of any salvage activities, EJ&E shall consult with ILDNR's Office of Water Resources regarding the abandonment's potential impacts to floodplains and comply with the reasonable requirements of ILDNR's Office of Water Resources to mitigate any potential impacts; and (3) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, EJ&E shall immediately cease all work and notify OEA, interested federally recognized tribes and the Illinois Historic Preservation Agency (SHPO), and OEA shall then consult with the SHPO, interested federally recognized tribes, EJ&E and other consulting parties, if any, to determine if additional mitigation measures are necessary.

3. This decision is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.