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SERVICE DATE – LATE RELEASE FEBRUARY 27, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 366X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—IN STARK COUNTY, OHIO

Decided: February 27, 2015

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.30 miles of railroad line in Stark County, Ohio. The line extends between mileposts EU 0.70 and EU 2.00 near Massillon, in Stark County, Ohio. Notice of the exemption was served and published in the Federal Register on January 29, 2015 (80 Fed. Reg. 4,962). The exemption is scheduled to become effective on February 28, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on February 3, 2015. In the EA, OEA states that the National Geodetic Survey (NGS) identified one geodetic station marker that may be affected by the proposed abandonment. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

Comments on the EA were due by February 18, 2015. No comments were received. Accordingly, the condition recommended by OEA in the EA will be imposed.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On February 6, 2015, the Stark County Parks District (proponent) filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, to provide time to negotiate with NSR for acquisition of the right-of-way for use as a recreational trail and for rail banking. Proponent submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service, as required by 49 C.F.R. § 1152.29. On February 23, 2015, NSR notified the Board that it is willing to negotiate with proponent for interim trail use.

Because proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and NSR is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board

within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, NSR may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

Proponent has also requested imposition of a public use condition under 49 U.S.C. § 10905. Proponent asks that NSR (1) be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and (2) be barred from removing or destroying potential trail-related structures, such as bridges, trestles, ballast, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption because the structures have considerable value for recreational trail purposes. Proponent's justification is that the Stark County Park District (County) owns the former railway corridor (5.74 miles) immediately adjacent north of the railroad line proposed for abandonment. The corridor is currently being managed as an equestrian trail and the line proposed for abandonment would add an additional 1.30 miles, which would be in conformity with the County's Master Greenway and Trail Plan. Proponent states that the 180-day period is needed to assemble and review real estate title information, complete a trail plan, and commence negotiations with NSR.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because proponent has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the February 28, 2015 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of an interim trail use agreement. If an interim trail use agreement is reached on a portion of the right-of-way, NSR must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NSR is not required to deal exclusively with proponent but may engage in negotiations with other interested persons.

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 January 29, 2015, 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 to permit proponent to negotiate with NSR for trail use for the rail line, for a period of 180 days, until August 26, 2015, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the February 28, 2015 effective date of the exemption, until August 27, 2015. The abandonment exemption is also made subject to the condition that NSR shall consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, NSR may discontinue service and salvage track and related materials. NSR shall otherwise keep intact the right-of-way underlying the tracks, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use

agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by August 26, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, NSR may fully abandon the line, upon expiration of the public use condition imposed here.

9. This decision and notice is effective on its service date.

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