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SERVICE DATE – LATE RELEASE JULY 2, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1088X

JACKSON, GORDONVILLE AND DELTA RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN CAPE GIRARDEAU COUNTY, MO.

Decided: July 2, 2012

This decision reopens the proceeding to impose a public use condition and makes a Finding of No Significant Impact under 49 U.S.C. § 1105.10(g).

Jackson, Gordonville and Delta Railroad Company (JGDR) filed a verified notice of exemption under 49 C.F.R. § 1152 subpart F—Exempt Abandonments to abandon approximately 13.3 miles of rail line between its southern terminus at milepost 149.4 in the City of Delta and its northern terminus at milepost 157.9 near Gordonville, in Cape Girardeau County, Mo. (the line). Notice of the exemption was served and published in the Federal Register on June 1, 2012 (77 Fed. Reg. 32,714). The exemption is scheduled to become effective on July 3, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on June 8, 2012. In the EA, OEA recommended that three conditions be imposed on any decision granting abandonment authority. First, OEA stated that during salvage operations, JGDR would remove all rail appurtenances, including 22 bridges and six at-grade crossings on the line, and would install bumpers or mounds along the top of stream banks as a safety measure after the bridges have been removed. OEA stated that the installation of the bumpers and mounds along the tops of stream banks may require prior authorization from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act (33 U.S.C. § 1344) for any discharges of dredged or fill materials into waters of the U.S., including wetlands. To ensure compliance with the Corps' regulations, OEA recommended that, prior to commencement of any salvage activities, a condition be imposed requiring JGDR to consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and to comply with the Corps' reasonable requirements.

Second, OEA indicated that the installation of the bumpers and mounds along the tops of the stream beds also may require prior authorization from the U.S. Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act and/or the Missouri Department of Natural Resources, Water Protection Program (MODNR), for any stormwater discharges. Therefore, OEA recommended that, prior to commencement of any salvage activities, a condition be imposed requiring JGDR to consult with EPA and MODNR to ensure that any concerns in the right-of-way (ROW) are addressed regarding erosion and sedimentation and waste water discharge.

Third, OEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS) commented that two geodetic station markers have been identified that may be affected by the proposed abandonment. Accordingly, OEA recommended that a condition be imposed requiring JGDR to consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

Comments to the EA were due on June 25, 2012. Based on the comments received, as discussed below, OEA finds that the three conditions previously recommended in the EA are no longer applicable.

In comments on the EA, JGDR submitted correspondence to OEA on June 8, 2012. First, JGDR submitted a letter dated May 29, 2012, from Mr. Robert Gramke, Missouri Section Chief, Regulatory Branch of the Corps. Mr. Gramke stated that a Section 404 permit under the Clean Water Act would not be required for the proposed abandonment because salvage operations would not impact any waters of the U.S. or wetlands. Accordingly, because no disturbance would occur, OEA has determined that the first condition is no longer applicable. Accordingly, it will not be imposed.

Second, JGDR submitted a letter dated April 18, 2012, addressed to Mr. David Stinson, Chief, Engineering Unit, Southeast Regional Office, Missouri Department of Natural Resources (MODNR), providing a detailed account of JGDR's salvage procedure and the best management practices it would put into place should the proposed abandonment be authorized. On June 18, 2012, OEA had a follow-up discussion with Mr. Stinson regarding whether a Section 402 permit under the Clean Water Act or a State Land Disturbance permit would be required in accordance with the requirements of the second condition. Mr. Stinson indicated to OEA that neither of these permits would be required because JGDR stated that its salvage procedure would not result in any erosion, sedimentation, or stream discharges. In addition, no federal permits would be required from EPA because MODNR has permitting authority from EPA to administer EPA's National Pollutant Discharge Elimination System stormwater discharge program. Therefore, based on the information provided, OEA has determined that the second condition is no longer applicable. Accordingly, it will not be imposed.

Lastly, JGDR submitted email correspondence from May 7, 2012, and May 8, 2012, exchanged among JGDR's counsel, Mr. Simon Monroe of the National Oceanic and Atmospheric Administration, NGS, Mr. Bob Adams, President of JGDR, and Mr. Chris Kelley of Bowen Engineering and Surveying (BE&S). OEA states that, according to the correspondence, the area of the proposed abandonment was field surveyed on April 9, 2012, by BE&S and that the survey indicated that the two geodetic station markers (N 141 and PTS F 4) previously identified by NGS as possibly being within the approximate area of the proposed abandonment were not found. In the email correspondence, NGS acknowledges this finding and indicates that it would need to be contacted only if geodetic station markers are found.

Therefore, because the two geodetic stations markers in question were not found in the area of the proposed abandonment and no other geodetic station markers have been identified by NGS in the immediate area, OEA has determined that the third condition is no longer applicable. Accordingly, it will not be imposed.

On June 21, 2012, OEA received a letter from Mr. Paul Strickland, chairman of a group of adjacent landowners, raising several concerns about the proposed abandonment. Mr. Strickland commented that three waterways located near the rail line have caused erosion along the ROW. As a measure to prevent future erosion from occurring, he recommends that, following abandonment, all railroad appurtenances, including bridges, trestles, and roadbed, be removed and the area appropriately restored.

OEA considered the concerns of the landowners and does not recommend any condition be imposed. OEA states that, as noted in the EA, following abandonment, JGDR would remove all railroad appurtenances, including 22 bridges and six at-grade crossings on the line, but would leave the roadbed and ballast intact and grade the ROW to a relatively smooth condition. JGDR also would install bumpers or mounds along the top of stream banks as a safety measure after the bridges have been removed to prevent stormwater from funneling down the stream banks and thus curtail erosion. According to OEA, JGDR's salvage procedure is a typical industry standard that both the Corps and MODNR have reviewed and found to be acceptable in terms of water quality and quantity control. Accordingly, the condition advocated by the landowners will not be imposed.¹

There are no remaining environmental or historic preservation issues that have been raised by any party or identified by OEA. Therefore, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the ROW may be suitable for other public use following abandonment and salvage of the line. On June 11, 2012, SEMO Greenways (SEMO) filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). SEMO has submitted a statement of willingness to assume 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

¹ Mr. Strickland also commented that the landowners oppose the conversion of the ROW to trail use. He contends that the adjacent farmland is routinely sprayed (both aerially and land applied) with chemicals that could pose a hazard to anyone traversing the ROW. Further, Mr. Strickland states that the ROW should revert back to adjacent properties because of the unlikelihood that rail service would ever be restored, given the lack of demand for rail service on the line. The requests for interim trail use and public use conditions are discussed further infra.

taxes that may be levied or assessed against, the ROW, as required at 49 C.F.R. § 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to possible future reactivation for rail service.

JGDR filed a letter on June 25, 2012, stating that JGDR's board of directors intended to meet to determine JGDR's willingness to negotiate an interim trail use/rail banking agreement with SEMO. In a letter filed on June 28, 2012, JGDR states that efforts to convene a meeting with the board of directors have been unsuccessful. By letter filed on June 29, 2012, JGDR states that it will not negotiate with SEMO for an interim trail use agreement.

The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and the trail use program is voluntary and consensual between the railroad and the trail user, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Therefore, because JGDR does not agree to negotiate trail use, a NITU will not be issued.

SEMO also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the line. SEMO requests that JGDR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that JGDR be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. As justification for its request, SEMO states that the rail corridor would make an excellent first phase of the first regional recreational trail in Southeast Missouri and conversion of the property to trail use is in accordance with local plans, including a regional trail plan included in the Comprehensive Plan of the City of Jackson, Mo. SEMO states that a second phase of the trail from Gordonville, Mo., to Jackson would have immediate potential to connect to the existing and continually expanding recreation trail systems of both the cities of Cape Girardeau and Jackson. SEMO states that the 180-day period is needed to negotiate property acquisition with the railroad owners, complete a trail plan, and secure the remaining funding for construction and maintenance.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abandonments—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 and notice 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 SEMO has satisfied these requirements, a 180-day public use condition will be imposed, requiring SEMO to keep intact the ROW (including bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the July 3, 2012 effective date of the exemption. 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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, JGDR is not required to deal exclusively with SEMO, but may engage in negotiations with other interested persons.

This action 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. SEMO's request for issuance of a notice of interim trail use is denied.
3. Upon reconsideration, the notice served and published in the Federal Register on June 1, 2012, exempting the abandonment of the line described above, is modified to the extent necessary to permit public use negotiations as set forth below for the ROW for a period of 180 days commencing from the July 3, 2012 effective date of the exemption (until December 30, 2012).
4. Consistent with the public use condition imposed in this decision, JGDR may discontinue service and salvage track and related materials. JGDR shall keep intact the ROW, including bridges, trestles, culverts, and tunnels, and shall refrain from disposing of the corridor (other than tracks, ties, and signal equipment), for a period of 180 days to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
5. Abandonment of the involved rail line will have no significant effect on the quality of the human environment or the conservation of energy resources or on historic resources.
6. This decision is effective on its date of service.

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