

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 1071

**Stewartstown Railroad Company – Adverse Abandonment –
in York County, Pa.**

BACKGROUND

In this proceeding, the Estate of George M. Hart (Estate) has filed an adverse abandonment application under 49 U.S.C. § 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of approximately 7.4 miles of rail line operated by Stewartstown Railroad Company (SRC) in York County, Pa. The rail line proposed for abandonment extends from milepost 0.0 at New Freedom to milepost 7.4 at Stewartstown (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

The Estate submitted an Environmental Report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. The Estate served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules (49 C.F.R. § 1105.7(b)).¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

According to the Estate, SRC was chartered in 1885 by local interests. Following construction, the Line provided freight and passenger service from the small communities of the Deer Creek Valley to and from a connection with Northern Central Railway (NCR) at New Freedom. SRC's traffic base was largely agricultural in nature, but it also served a number of small manufacturing firms. Through the years, Stewartstown's passenger and freight traffic base dwindled. The Line suffered a major setback in 1972, when Hurricane Agnes inflicted considerable damage upon the railroads.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 1071.

The Estate indicates that SRC has not conducted common carrier freight operations over the Line since about 1992. According to the Estate, SRC terminated its lease of the NCR line in 1992. Because no new freight operator was installed on the NCR line, freight service on the NCR line, and, by extension, to and from SRC's line itself ended. Following the cessation of freight common carrier operations, excursion trains continued over the original Stewartstown line (the Line that is the subject of this abandonment proceeding) to and from New Freedom until the spring of 2004.

According to the Estate's application seeking adverse abandonment of the Line, George M. Hart was an officer and director of SRC. During that time, he loaned over \$350,000 to the railroad. The loan was secured by SRC's assets. On April, 17, 2008, Mr. Hart died, leaving a will directing his executor to collect the debt owed to the Estate by SRC. The application avers that the Estate has demanded repayment of the loan in full, but SRC has not complied, presumably because it has insufficient funds. The application then notes that the Estate believes that the only resources SRC has to repay the loan are its locomotives, rolling stock, possible real estate, and improvements on the real estate.

If the Board should grant this adverse abandonment, the application explains that the Estate, subject to appropriate process of Pennsylvania law, would foreclose upon the Line and, if necessary to satisfy the Estate's financial stake in the rail property, salvage the Line's track and track material and dispose of the real estate. The Estate intends to target only track and track material, and has specifically determined not to undertake the salvage or removal of structures such as train stations, bridges or culverts. The Estate does not intend as part of any salvage activity to disturb the sub grade or sub grade structures, and therefore will not engage in any excavation activity. The Estate would prefer, if at all possible, to have the foreclosed-upon SRC assets sold at fair market value to an interested third party with plans to preserve the Line for railroad purposes.

The Estate believes the right-of-way to be generally 30 feet wide, except for a short distance just west of Stewartstown, which is 53 feet wide. The Line travels in a generally easterly direction traversing agricultural, residential, and wooded rural lands.

The Estate believes that there are 16 railroad structures (10 bridges and overpasses, a water tower/reservoir, an engine house, tool shed, a coal dock, and two railroad stations) on or adjacent to the Line that are 50 years old or older. The Estate has not had access to the entire Stewartstown property, and therefore has not been able to document structures not accessible from public property.

The following 7 SRC structures among the 16 identified are currently listed in the National Register of Historic Places: the SRC train station in Stewartstown, SRC's Turnpike Station in Shrewsbury, SRC's engine house, the second Deer Creek crossing bridge, the Ridge Road Overpass, the Stone Arch Road Overpass, and the Valley Road Overpass. The Estate is

unaware of any archeological resources or any other previously unidentified historic properties along the Line.

Diversion of Traffic

According to the Estate, no freight has moved over the SRC rail line since April of 1992. Some passenger excursion trains operated, but that, too, ended in 2004. Since 2004, the Line has fallen into disrepair.

Because there has been no traffic moving on the line for many years, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way.

The Estate would prefer to have the foreclosed-upon SRC assets sold at fair market value to some interested third party who intends to preserve the Line for railroad purposes. However, if it becomes necessary for the Estate to salvage track and/or track material along the Line, such salvage activities would be accomplished by use of the right-of-way for access, along with existing public and private crossings. No new access roads are contemplated. The Estate does not intend to disturb any of the underlying roadbed or to perform any activities that would cause sedimentation or erosion of the soil. The Estate does not anticipate any dredging or use of fill in the removal of the track material. The crossties (if salvaged) and/or other debris would be transported away from the Line, and would not be discarded along the right-of-way. Crossties would not be placed or left in streams or wetlands, or along the banks of such waterways. Also, during track removal, appropriate measures would be implemented to prevent or control spills from fuels, lubricants or any other pollutant materials from entering any waterways.

The Estate believes that the proposed abandonment is consistent with existing land use plans and that that no prime agricultural land would be affected by the proposed abandonment.

The Estate does not believe that the proposed abandonment would have any material adverse effect on public health and safety. The abandonment would eliminate 31 public at-grade road crossings. The Estate is not aware of any known hazardous waste sites or sites where there have been known hazardous materials spills on the Line.

The Railroads for National Defense Program, SDDC Transportation Engineering Agency has indicated that it has no comments on the proposed abandonment and does not plan to oppose the abandonment.

The National Geodetic Survey (NGS) has advised OEA that five geodetic station markers have been identified that may be affected by the proposed abandonment. Accordingly, we will recommend a condition requiring that the Estate consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

The Estate states that the Line traverses Ebaughs Creek, Deer Creek, and Codurus Creek. The Estate believes that no permits under section 402 or 404 of the Clean Water Act would be required for salvage activities related to the proposed abandonment. If track and track material salvage are necessary, the Estate would first target the track and track material not in or immediately adjacent to wetlands and watercourses. No designated wetlands or 100-year flood plains would be affected by salvage activities related to the proposed abandonment. No part of the Line is located within a designated coastal zone.

The Estate is unaware of any wildlife sanctuaries or refuges, national or state parks or forests that would be adversely affected by the proposed abandonment.

The U.S. Fish and Wildlife Service, Pennsylvania Field Office (USFWS) in State College, Pennsylvania has indicated that the proposed abandonment is within the range of the bog turtle, a species that is federally listed as threatened (USFWS project tracking number 2011-0791). To determine the potential effects of the proposed project on bog turtles and their habitat, all wetlands in, and within 300 feet of, the project area should be identified by someone qualified to identify and delineate wetlands. If wetlands are identified, their potential suitability as bog turtle habitat should be assessed. If potential bog turtle habitat is found in or near the project area, efforts should be made to avoid any direct or indirect impacts to those wetlands. If adverse effects to the bog turtle cannot be avoided, further consultation with USFWS would be necessary to avoid potential violations of section 9 (prohibiting "take" of listed species) and/or section 7 (requiring federal agencies to consult) of the Endangered Species Act. Accordingly, we will recommend a condition requiring that, prior to commencement of any salvage activities, the Estate shall consult with the USFWS in order to discuss the implementation and documentation of any field surveys required to assess potential impacts to the bog turtle, and to identify any appropriate mitigation measures that may be warranted.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that salvage activities would cause significant environmental impacts

HISTORIC REVIEW

As stated above, SRC was established in 1885, moving freight to New Freedom, Pa., where it was transferred to trains moving south to Baltimore or north to York, Pa. Passengers also travelled on SRC for both business and pleasure. The changing economy slowly reduced freight traffic, as businesses closed or moved away from Stewartstown. In 1972, Hurricane Agnes leveled a severe blow to the railroad. High winds and rain wiped out much of the connecting Pennsylvania Railroad rail bed and shut down local operations.² SRC resumed operations for a brief time in 1985, celebrating SRC's centennial. Freight service drew to a halt in 1992.

The Estate submitted an historic report as required by the Board's environmental rules (49 C.F.R. § 1105.8(a)) and served the report on the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation Office (SHPO) pursuant to 49 C.F.R. § 1105.8(c). The SHPO has submitted comments stating that SRC and its associated buildings, as indicated above, have been determined eligible for the National Register of Historic Places (National Register). The SHPO indicates that any abandonment that results in the demolition of buildings, bridges and the break-up of rights-of-way would have an adverse effect on this resource. The Estate contends that the SHPO does not object to the recovery of rail and associated track materials and suggests that OEA not recommend a condition barring recovery of track and track material. OEA, in subsequent consultation with the SHPO, has determined that the recovery of such track assets would be considered an adverse effect on the resource. Accordingly, we are recommending a condition requiring the Estate to take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects (including track and track material) within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Preservation Pennsylvania (PPA), an organization dedicated to the protection of historically and architecturally significant properties, submitted a comment in this proceeding on August 8, 2011. PPA notes that it listed the SRC on its "At Risk List" for 2010 and is familiar with the historic resources associated with the Line. PPA requests consulting party status in any historic review process that may result from this proceeding. PPA also requests a "180-day stay

² From The Stewartstown Walking Tour, second edition, copyright 1993; online at www.syclife.com.

of proceedings” to allow PPA to examine the historic significance of the SRC right-of-way, including track materials.

As explained above, OEA is recommending in this EA that, should the Board approve this adverse abandonment, the approval be subject to a “Section 106” historic preservation condition. Such a condition would require that the Estate neither conduct salvage activities on the Line nor consummate the adverse abandonment of the Line until OEA completes the historic review process under Section 106 of the National Historic Preservation Act and the Board removes the Section 106 condition. A Section 106 condition, if imposed, would allow OEA and the applicant (here, the Estate) the time necessary to gather the information necessary to identify historic properties, assess whether the proposal would adversely affect them, and develop mitigation to avoid, minimize, or mitigate the adverse affects.

Should the Board impose the Section 106 condition, we will invite PPA (and any other interested party) at that time to be a consulting party. OEA believes that a stay of the entire proceeding would not be necessary to allow us to comply with Section 106; rather, the Section 106 condition itself would provide the time necessary to complete the three stages – identification, assessment of adverse affect, and mitigation – in the Section 106 historic review process. As noted above, if a Section 106 condition is imposed, the Estate may neither salvage the line nor consummate the adverse abandonment until completion of the Section 106 process and removal of the condition by the Board.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.³ The database indicated no federally-recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the APE of the proposed abandonment.

CONDITIONS

We recommend that the following environmental conditions be imposed on any decision granting abandonment authority.

1. The Estate of George M. Hart shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
2. The Estate of George M. Hart (the Estate) shall take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects (including track

³ Native American Consultation Database, <http://home.nps.gov/nacd/> (last visited August 4, 2011).

and track material) within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. The Estate shall report back to the Board's Office of Environmental Analysis regarding any consultations with the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation Office and the public. The Estate may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

3. Prior to commencement of any salvage activities, the Estate of George M. Hart (the Estate) shall consult with the U.S. Fish and Wildlife Service in order to discuss the implementation and documentation of any field surveys required to assess potential impacts to the bog turtle, a federally listed threatened species, and identify any appropriate mitigation measures that may be warranted. The Estate shall report the results of this consultation in writing to the Board's Office of Environmental Analysis prior to the onset of salvage activities. The Estate may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the consultation process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Because this is an adverse abandonment proceeding, public use requests are not appropriate and will not be entertained. Any offer of financial assistance (OFA) under 49 C.F.R. § 1152.27 to acquire the line for continued rail service must be filed by no later than 10 days after service of a decision granting the application. In accordance with the Board's March 10, 2011 decision, the Board will not consider OFAs to subsidize continued rail service.

TRAILS USE

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 C.F.R. § 1152.29) must be filed by August 22, 2011, and should address that issue.

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send original and 2 copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Kenneth Blodgett, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 1071 in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Kenneth Blodgett by phone at (202) 245-0305, fax at (202) 245-0454, or e-mail at blodgettk@stb.dot.gov.

Date made available to the public: August 12, 2011.

Comment due date: September 8, 2011.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment