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SERVICE DATE - DECEMBER 29, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 250X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN CHAMPAIGN COUNTY, IL

Decided: December 27, 2004

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 0.18-mile rail line extending between approximately milepost UM 28.50 and milepost UM 28.68 in Urbana, Champaign County, IL. Notice of the exemption was served and published in the Federal Register on November 30, 2004 (69 FR 69682-83). The exemption is scheduled to become effective on December 30, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 3, 2004. In the EA, SEA notes that, according to NSR, the U.S. Fish and Wildlife Service and/or the Illinois Department of Natural Resources Natural Resources Review and Coordination Division have indicated that 26 threatened and endangered species occur in Illinois, and that one of those, the Indiana Bat, occurs in Champaign County. Therefore, SEA recommends that, prior to conducting salvage activities, NSR consult with U.S. Fish and Wildlife Service Rock Island Field Office (Field Supervisor, U.S. Fish and Wildlife Service, 4469 48th Ave. Court, Rock Island, IL 61201) (FWS) regarding impacts to Federally listed threatened and endangered species that may occur in the vicinity of the line and report the results of the consultation to SEA.

Comments to the EA were due by December 17, 2004. No comments were received by the due date. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

On December 9, 2004, the Urbana Park District, the City of Urbana, and the Champaign County Design and Conservation Foundation (collectively, Commenters) filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. Commenters have 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and have acknowledged that the use of the right-of-way for trail

purposes is subject to future reactivation for rail service. In a response submitted on December 15, 2004, NSR states that it consents to the issuance of a NITU.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. Commenters have also requested that a 180-day public use condition be imposed, precluding NSR from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels. Commenters submit that this corridor would make an excellent recreational trail, and conversion of the property to trail use is in accordance with local plans. Commenters state that the 180-day period is needed to assemble and to review title information, complete a trail plan and commence negotiations with NSR.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. Commenters have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed, commencing from the effective date of the exemption, to enable any State or local government or other interested person to negotiate the acquisition of the line for public use. If a 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. Rather, it provides 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 the Commenters, but may engage in negotiations with other interested persons.

As conditioned, this decision 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 November 30, 2004, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until June 27, 2005), and subject to the conditions that

NSR shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the December 30, 2004 effective date of the exemption (until June 28, 2005), to enable any State or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (2) prior to conducting salvage activities, consult with FWS regarding impacts to Federally listed threatened and endangered species that may occur in the vicinity of the line and report the results of the consultation to SEA.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by June 27, 2005, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line upon expiration of the public use condition, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary