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SERVICE DATE – MARCH 5, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 355X)

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN SCOTT COUNTY, TENN.

Decided: March 5, 2015

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 12.63 miles of rail line from milepost NR 0.0 at New River to milepost NR 12.63 at Sterling, in Scott County, Tenn. (the Line). Notice of the exemption was served and published in the Federal Register on February 4, 2015 (80 Fed. Reg. 6,175). The exemption is scheduled to become effective on March 6, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on February 9, 2015, recommending that three environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that the National Geodetic Survey (NGS) had not submitted comments regarding the potential impact of the proposed abandonment to any geodetic station markers that may be present in the project area. Accordingly, OEA recommended that, if the NGS identifies geodetic station markers that may be affected by the proposed abandonment, CNOTP be required to consult with and notify NGS at least 90 days prior to the commencement of any salvage activities that would disturb or destroy any geodetic station markers to plan for the relocation of the geodetic station markers (Condition 1).

In the EA, OEA also stated that the U.S. Fish and Wildlife Service (USFWS) submitted comments identifying Federally listed threatened and endangered species that may be located in the vicinity of the Line. OEA noted that the Line is adjacent to or crosses several waterways where aquatic protected species could potentially be present. OEA stated that because salvage would be limited in scope and would take place within an existing rail right-of-way, it does not anticipate adverse impacts to any species that may be present. However, OEA stated that because one or more protected species may be present within or adjacent to the rail right-of-way, OEA recommended that CNOTP be required to consult with the USFWS, prior to the commencement of any salvage activities, regarding the potential impact of salvage activities on Federally listed threatened and endangered species in the project area and comply with its reasonable recommendations to mitigate any potential impacts. OEA also recommended that CNOTP be required to report the results of any consultations with USFWS to OEA (Condition 2).

In the EA, OEA noted that CNOTP served an Historic Report on the Tennessee Historical Commission (State Historic Preservation Officer or SHPO), pursuant to 49 C.F.R. § 1105.8(c). CNOTP indicated that there are six bridges located on the Line. OEA stated that, at the time the EA was prepared, the SHPO had not provided comments, therefore, OEA has not been able to consider the SHPO's opinion in determining if the Line or any structures associated with it may be eligible for listing on the National Register of Historic Places (National Register). Therefore, OEA recommended that CNOTP be required to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f), has been completed. OEA also recommended that CNOTP be required to report back to OEA regarding any consultations with the SHPO and the public, and that CNOTP be prohibited from filing its consummation notice or initiating 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 (Condition 3).

Comments in response to the EA were received by the February 24, 2015 due date. OEA issued a final EA on February 27, 2015.

In the final EA, OEA states that it received comments from the USFWS stating that the Federally listed mussel species occurring in streams near the Line could be affected by bridge removal or other salvage activities affecting streams or stream banks. Therefore, OEA recommends that Condition 2 previously recommended by OEA be revised. OEA states that Condition 2, requiring CNOTP to consult with USFWS, should be revised to specify that CNOTP be required to: (a) ensure that any entity undertaking salvage of the rail line proposed for abandonment comply with the mitigation measures recommended by USFWS for the protection of Federally listed mussel species; and (b) ensure that any entity undertaking salvage activity implement the best management practices recommended by USFWS for salvage activities that would involve the removal of bridges or that could potentially impact streams or stream banks. Accordingly, the two conditions (Conditions 1 and 3) previously recommended by OEA in the EA, and the revised Condition 2 recommended in the 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 February 4, 2015, exempting the abandonment of the Line described above is subject to the conditions that CNOTP shall: (1) consult with and notify NGS at least 90 days prior to the commencement of any salvage activities that would disturb or destroy any identified geodetic station markers to plan for the possible relocation of the geodetic station markers; (2)(a) prior to the commencement of any salvage activities, consult with the USFWS regarding the potential impact of salvage activities on Federally listed mussel species in the project area and comply with the reasonable recommendations of USFWS to mitigate any potential impacts, (b) report the results of any consultations with USFWS to OEA, (c) ensure that any entity undertaking the salvage activities shall comply with the mitigation measures recommended by USFWS, and (d) ensure that any entity undertaking salvage activities implement the best management practices recommended by USFWS for salvage activities that would involve the removal of bridges or that could potentially impact streams or stream banks; and (3)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f), has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) 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. This decision is effective on its service date.

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