

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 238X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN BUCHANAN COUNTY, VA

Decided: September 3, 2004

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.0-mile line of railroad between milepost BH-0.0 at Bull Creek and milepost BH-4.0 at Harman, in Buchanan County, VA. Notice of the exemption was served and published in the Federal Register on September 9, 2003 (68 FR 53217). The exemption became effective on October 9, 2003.

On August 23, 2004, the Buchanan County Board of Supervisors (County) late-filed a request for the issuance of a notice of interim trail use (NITU) for the 4.0-mile line of railroad under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and for a 180-day public use condition under 49 U.S.C. 10905,¹ in order to negotiate with NSR for acquisition of the right-of-way for use as a recreational trail.² The County also requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The County submitted a statement of willingness to assume financial 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 payment of any and all taxes that

¹ In an environmental assessment served on September 23, 2003, the Board's Section of Environmental Analysis indicated that the right-of-way may be suitable for other public use following abandonment.

² The September 9, 2003 notice provided that trail use/rail banking requests were to be filed by September 19, 2003, and that requests for public use conditions were to be filed by September 29, 2003. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile filed on August 27, 2004, NSR states that it has not consummated the abandonment of the line, and that it is willing to negotiate with the County for interim trail use. NSR also requests the Board to extend the consummation notice filing deadline 60 days beyond the NITU negotiation deadline.

Inasmuch as NSR has not consummated the abandonment and is willing to negotiate with the County for trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NSR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Because an extension of the consummation notice filing deadline will promote the establishment of trail use and rail banking consistent with the Trails Act, the requested extension will be granted. Accordingly, NSR's consummation notice filing deadline will be extended to May 1, 2005.

The County's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond a 180-day period after the effective date of the decision (here September 9, 2003). That period ended on March 7, 2004.

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. The late-filed request for a NITU under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 is accepted.
3. NSR's request for an extension of time to consummate the abandonment is granted. The consummation notice filing deadline is extended to May 1, 2005.
4. Upon reconsideration, the decision served on September 9, 2003, 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, for a period of 180 days from the service date of this decision and notice, until March 2, 2005.

5. 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.

6. 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.

7. 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.

8. If an agreement for interim trail use/rail banking is reached by March 2, 2005, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line.

9. The County's request for a public use condition is denied.

10. This decision is effective on its service date.

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

Vernon A. Williams
Secretary