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SERVICE DATE – SEPTEMBER 12, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 347X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN MARENGO COUNTY, ALA.

Decided: September 12, 2013

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.8 miles of rail line between milepost 241.3 N (east of the line’s crossing of the mouth of Devil’s Run Slough where the slough joins the Black Warrior River) and milepost 242.1 N (near the intersection of Nash Ave. and E. Franklin St., in Demopolis), in Marengo County, Ala.¹ Notice of the exemption was served and published in the Federal Register on August 14, 2013 (78 Fed. Reg. 49,603). The exemption is scheduled to become effective on September 13, 2013.

The Board’s Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on August 19, 2013. In the EA, OEA states that NSR requested comments from the U.S. Environmental Protection Agency (USEPA) and the Alabama Department of Environmental Management (ADEM) regarding compliance with applicable local, state, and federal water quality regulations. ADEM submitted comments stating that an ADEM permit under Section 402 of the Clean Water Act, 33 U.S.C. § 1344, would be required only if the proposed abandonment would result in the land disturbance of one or more acres. OEA states that, because NSR does not plan to conduct any excavation or other ground disturbance activities, it concurs with NSR’s determination that an ADEM permit would not be required. OEA further states that, in ADEM’s comments, ADEM also states that the proposed abandonment should be conducted in a manner that minimizes potential adverse impacts to water quality, and NSR should implement and maintain effective Best Management Practices (BMPs). Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with ADEM regarding the implementation of BMPs prior to beginning salvage activities.

Further, OEA states that the Alabama Historical Commission (State Historic Preservation Office or SHPO) submitted comments stating that the proposed abandonment would not affect any archaeological resources listed in or eligible for listing in the National Register of Historic Places (National Register). However, the SHPO also states that it requires additional

¹ According to NSR, abandonment was sought to permit the removal of the remaining portion of the railroad bridge over the mouth of Devil’s Run Slough at the request of the United States Coast Guard (USCG), because USCG views the bridge structure as an impediment to waterway navigation.

information to continue its review. Specifically, the SHPO requests that NSR determine whether the railroad bridge at approximately milepost 241.4 N is of a common trestle type and whether other examples of this bridge type remain in Alabama. In recognition of the SHPO's request, OEA recommends that a condition be imposed requiring NSR to retain its interest in and take no steps to alter the historic integrity of the bridge at approximately milepost 241.4 N. This condition would allow NSR to file its consummation notice and proceed with the abandonment, except as related to the bridge. NSR would not be able to dispose of or salvage the bridge until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed.

Comments to the EA were due September 3, 2013. OEA states in its final EA that the SHPO submitted comments stating that the proposed abandonment would not affect any cultural resources listed in or eligible for listing in the National Register. OEA states that it has reviewed the information provided by the SHPO and that it concurs with the SHPO's comments. Accordingly, OEA states that it no longer recommends imposition of a condition requiring NSR to maintain its interest in and take no steps to alter the historic integrity of the bridge located on the line at approximately milepost 241.4 N.

OEA states that the SHPO requests in its comments that, should artifacts or archaeological features be encountered during abandonment related activities, NSR should cease work and consult immediately with the SHPO. Accordingly, OEA recommends that an additional condition be imposed requiring NSR to consult with OEA and the SHPO should unanticipated artifacts or archaeological features be discovered during salvage activities.

Consistent with OEA's recommendations: (1) the previously recommended condition requiring NSR to maintain its interest in and take no steps to alter the historic integrity of the bridge located on the line at approximately milepost 241.4 N will not be imposed; (2) the previously recommended condition requiring NSR to consult with ADEM regarding the implementation of BMPs prior to beginning salvage activities will remain unchanged; and (3) the additional recommended condition requiring NSR to consult with OEA and the SHPO should unanticipated artifacts or archaeological features be discovered during salvage activities will be imposed. Based on OEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

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. Upon reconsideration, the notice served and published in the Federal Register on August 14, 2013, exempting the abandonment of the line described above is subject to the conditions that NSR shall: (1) consult with ADEM regarding the implementation of BMPs prior to beginning salvage activities and comply with that agency's reasonable recommendations; and (2) in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts be discovered during salvage activities, NSR shall immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. This decision is effective on its service date.

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