

SERVICE DATE – APRIL 30, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-325 (Sub-No. 4X)

FLORIDA MIDLAND RAILROAD COMPANY, INC.—ABANDONMENT EXEMPTION—
IN SUMTER COUNTY, FL

Decided: April 29, 2008

Florida Midland Railroad Company, Inc. (FMID),¹ filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.0-mile line of railroad between milepost ST-762.10 in Wildwood and milepost ST-766.10 (the end of the track) near Orange Home, known as the Wildwood Branch, in Sumter County, FL.² On April 1, 2008, notice of the exemption was served and published in the Federal Register (73 FR 17416-17) (April 2008 notice). The exemption is scheduled to become effective on May 1, 2008.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 4, 2008. In the EA, SEA recommends four conditions. First, SEA notes that the Florida Department of Environmental Protection (FLDEP) has indicated that FMID must submit a Geographic Information System (GIS)-generated linear corridor map to FLDEP, Southwest District Office, so that it can verify the occurrence of any possible identified hazardous waste sites in the area of the proposed abandonment. Therefore, SEA recommends that FMID be required, prior to commencement of any salvage activities, to submit a GIS-generated linear corridor map or equivalent mapping program to FLDEP, Southwest District Office (Condition 1).

Second, SEA notes that the St. Johns River Water Management District (SJWMD) has indicated that, for the portion of the proposed abandonment within SJWMD's area, any wetlands adjacent to the line should be protected from disturbance, sedimentation and encroachment during the removal of rail and track materials. SEA further notes that SJWMD has stated that FMID should contact SJWMD's Orlando Service Center regarding permitting requirements.

¹ FMID is a wholly owned subsidiary of Pinsky Railroad Company, a noncarrier holding company.

² In STB Docket No. AB-325 (Sub-No. 2X), Florida Midland Railroad Company—Abandonment Exemption—in Sumter and Lake Counties, FL, FMID had filed a petition for exemption for abandonment of a line of railroad that included the Wildwood Branch. In a decision served on February 23, 2001, the Board granted the exemption, but FMID chose not to consummate the abandonment, and the authorization expired.

Therefore, SEA recommends that, prior to commencement of any salvage activities, FMID consult with SJWMD's Orlando Service Center regarding permitting and track removal and comply with SJWMD's reasonable requirements (Condition 2).

Third, SEA states that the Florida Fish and Wildlife Conservation Commission (FFWCC) has recommended that the area be surveyed for gopher tortoises (listed as threatened) and that, if any burrows are found, Mr. Rick McCann of FFWCC, Division of Habitat and Species Conservation (DHSC), be contacted to obtain an incidental take or relocation permit, as appropriate. Therefore, SEA recommends that, prior to commencement of any salvage activities, FMID consult with Mr. McCann of DHSC regarding tortoises in the project area and any incidental take or relocation permits that may be required (Condition 3).

Fourth, SEA states that the National Geodetic Survey (NGS) has indicated that nine geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring that FMID contact NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers so that NGS may plan for their possible relocation (Condition 4).

Comments to the EA were due on April 18, 2008. In a letter dated April 11, 2008, FMID submitted a letter from FLDEP dated April 10, 2008, stating that FLDEP has determined that FMID will not need to submit a GIS-generated linear corridor map to FLDEP's Southwest District Office. FMID also stated that its representative walked the track subject to the proposed abandonment and found no evidence of tortoises or NGS monuments, including geodetic station markers, in the vicinity around the track. FMID noted that it had consulted with the National Oceanic and Atmospheric Administration (NOAA), the agency under which NGS is organized, and NOAA informed FMID that NOAA would not be concerned with the proposed abandonment if there were no NGS geodetic station markers within 10 feet of the track. Therefore, SEA now recommends that Conditions 1 and 4 previously recommended in the EA not be imposed. However, SEA indicates that, despite FLDEP's walking survey finding no tortoises in the vicinity around the tracks at issue, FLDEP did not inform SEA whether it had consulted with Mr. Rick McCann of FFWCC as recommended in Condition 3. Therefore, Condition 3 recommended by SEA in the EA will be imposed. No comments were received concerning Condition 2. Therefore, Condition 2 also will be imposed.

As noted in the April 2008 notice, FMID asserts that it owns the track structure and related materials on the line, but does not own the underlying real estate comprising the right-of-way. Therefore, public use requests are not appropriate because, after abandonment, FMID will not retain a transferable interest to which a public use condition under 49 U.S.C. 10905 could attach. See Florida Midland Railroad Company—Abandonment Exemption—in Sumter and Lake Counties, FL, STB Docket No. AB-325 (Sub-No. 2X) (STB served June 19, 2002).³

³ Trail use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by April 11, 2008. FLDEP's Office of Greenways and Trails
(continued . . .)

Based on SEA'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.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the exemption of the abandonment of the rail line described above, and covered by the notice served and published in the Federal Register on April 1, 2008, is subject to the conditions that, prior to commencement of any salvage activities, FMID shall: (1) consult with SJWMD's Orlando Service Center regarding permitting and track removal and comply with SJWMD's reasonable requirements; and (2) consult with Mr. Rick McCann of DHSC regarding tortoises in the project area and any incidental take or relocation permits that may be required.

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

(... continued)

(OGT) has expressed interest in working with Sumter and Lake Counties, FL, in pursuing acquisition of the rail corridor proposed for abandonment for conversion to a trail. FLDEP notes that Southwest Florida Water Management District (SFWMD) has reviewed the proposed abandonment project and has made recommendations for the line's inclusion as part of a pedestrian and bicycle trail in Sumter and Lake Counties as consistent with the planning objectives of other state and local organizations. These interests were expressed in letters transmitted to the Board, and included as an appendix to FMID's environmental report. However, they do not constitute formal requests for a trail use condition before the Board. Should OGT, SFWMD, or other organizations wish to pursue a trail use condition, they may file a formal request under 16 U.S.C. 1247(d) in the form prescribed in 49 CFR 1152.29, along with a timely petition to reopen. However, as FMID noted in its verified notice of exemption, it is committed to consummating the abandonment as part of a settlement agreement with adjoining land owners.