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SERVICE DATE – JULY 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 586 (Sub-No. 3X)

NORTH CENTRAL RAILWAY ASSOCIATION, INC.—ABANDONMENT EXEMPTION—
IN FRANKLIN AND HARDIN COUNTIES, IOWA

Decided: July 3, 2013

North Central Railway Association, Inc. (NCRA), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments, to abandon 10.46 miles of rail line between milepost 201.46 at or near Ackley, and milepost 191.0 at or near Geneva, in Franklin and Hardin Counties, Iowa. Notice of the exemption was served and published in the Federal Register on June 5, 2013 (78 Fed. Reg. 33,891). The exemption is scheduled to become effective on July 5, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on June 10, 2013. In the EA, OEA states that the Iowa Department of Natural Resources (DNR) provided several comment letters that list a number of issue areas that may be of concern during salvage operations. Specifically, DNR noted that permits and/or additional reviews may be required if salvage activities associated with the proposed abandonment generate fugitive dust or disturbances to waterways, floodplains, wetlands, and soil. Therefore, OEA recommends that a condition be imposed requiring NCRA to consult with DNR prior to conducting salvage operations to determine what, if any, permits are needed prior to the salvage process, and to comply with the reasonable requirements of the permits.

OEA states that NCRA submitted an historic report, as required by the Board's rules at 49 C.F.R. § 1105.8(a), and served the report on the Iowa Department of Cultural Affairs (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). The report indicated that the line proposed for abandonment contains bridges, but does not specify the quantity or age of the bridges. The report further indicated that there were no structures on the line that are 50 years old or older. By letter dated February 21, 2013 (SHPO reference # 121000010), the SHPO indicated that, based on the information provided, the section of track within the right-of-way (the Area of Potential Effect), would not be eligible for listing in the National Register of Historic Places. The SHPO, however, could not comment on whether the proposed abandonment would have the potential to adversely affect archaeological resources. The SHPO recommended that NCRA obtain an archaeological background check from the Office of the State Archaeologist at the University of Iowa for the area proposed for abandonment. OEA states that, because the line proposed for abandonment is located in an area that has already been disturbed, it believes it is unlikely that archaeological resources would be present. In addition,

OEA states that it conducted a search of the National Park Service's Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the area proposed for abandonment. OEA states that 11 federally recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way.¹ Therefore, OEA recommends that a condition be imposed that would require NCRA to immediately cease all work associated with salvage activities and notify OEA, the SHPO, and any federally recognized tribes that may have an interest in the area of the proposed abandonment if any unanticipated cultural resources are discovered during salvage activities.

Comments to the EA were due by June 25, 2013, but no comments were received. Accordingly, the conditions recommended by OEA 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.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On June 26, 2013, the City of Ackley and the Iowa Natural Heritage Foundation (City) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with NCRA for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² Pursuant to 49 C.F.R. § 1152.29, the City has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on June 27, 2013, NCRA has indicated its willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and NCRA is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no

¹ The tribes are: the Flandreau Santee Sioux Tribe in South Dakota, the Lower Sioux Indian Community in the State of Minnesota, the Prairie Island Indian Community in the State of Minnesota, the Sac and Fox Nation of Missouri in Kansas and Nebraska, the Sac and Fox Nation of Missouri, the Sac and Fox Nation of Oklahoma, the Sac and Fox Tribe of the Mississippi in Iowa, the Santee Sioux Nation in Nebraska, the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation in South Dakota, the Spirit Lake Tribe in North Dakota, and the Upper Sioux Community in Minnesota.

² The City filed a request for a NITU on June 24, 2013, which was superseded by a revised request filed on June 26, 2013.

agreement is reached within 180 days, NCRA may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The City asks that NCRA be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that NCRA be barred from the removal or destruction of potential trail-related structures, such as bridges, ballast, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The City's justification for its request is that the corridor intersects Prairie Bridges Park, which has an extensive handicapped accessible trail network and would make an excellent connection with the City's town center. The City states that the 180-day period is needed to complete negotiations with NCRA.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring NCRA to keep intact the right-of-way (including trail-related structures such as bridges, ballast, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the July 5, 2013 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on January 1, 2014, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until December 30, 2013. If a trail use agreement is reached on a portion of the right-of-way prior to December 30, 2013, NCRA must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide 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, NCRA is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, 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 June 5, 2013, 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 to permit the City to negotiate with NCRA for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until December 30, 2013, and to permit public use negotiations as set forth below, for a period of 180 days from the July 5, 2013 effective date of the exemption, until January 1, 2014. The abandonment is also subject to the conditions that: (1) prior to commencement of any salvage activities, NCRA shall consult with DNR to ensure that any concerns in the right-of-way are addressed regarding fugitive dust, floodplain or wetland disturbances, erosion and sedimentation, and wastewater discharges; and (2) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during NCRA's salvage activities, NCRA shall immediately cease all work and notify OEA, the SHPO, and interested federally recognized tribes. OEA shall then consult with NCRA, the SHPO, interested federally recognized tribes, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, NCRA may discontinue service and salvage track and related materials. NCRA shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, ballast, trestles, culverts, and tunnels, for a period of 180 days (until January 1, 2014) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, 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 December 30, 2013, for the right-of-way, interim trail use may be implemented. If no agreement is reached, NCRA may fully abandon the line.

9. This decision and notice is effective on its service date.

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