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SERVICE DATE – APRIL 20, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: April 19, 2010

This decision holds these proceedings in abeyance while the United States District Court for the District of Columbia, acting as the Special Court, addresses the underlying question of the nature of the trackage sought to be abandoned.

Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) (collectively, Applicants) jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NS to discontinue service over, an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch.¹ The notice of the exemption was served and published in the Federal Register on March 18, 2009 (74 FR 11631-32). For the reasons set forth below, we will hold these proceedings in abeyance, including the environmental and historic review process.

¹ This line is between milepost 0.00, CP Waldo, and milepost 1.36, a point east of Washington Street, in Jersey City, Hudson County, NJ. In City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Louis M. Manzo—Petition for Declaratory Order, STB Finance Docket No. 34818 (STB served Aug. 9, 2007) (Jersey City Dec. Ord.), the Board described the line as follows: extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ.

The exemption was scheduled to become effective April 17, 2009, unless stayed by the Board. By decision served on April 6, 2009, the Board granted a request of the Embankment Preservation Coalition and extended the deadline for filing petitions to reopen, requests for trail use and public use conditions, and responses to the Environmental Assessment until May 7, 2009. By decision served on April 16, 2009, the effective date of the exemption was stayed pending completion of the environmental review process.

In Jersey City Dec. Ord., the Board determined that the Sixth Street Embankment (now referred to as the Harsimus Branch) was a line of railroad subject to Federal abandonment regulation. This finding was appealed to the United States Court of Appeals for the District of Columbia Circuit, which found that, where the Board's authority was challenged and an interpretation of the Final System Plan (FSP) or the Special Court's conveyance order under 45 U.S.C. 719(e)(2) was required, the Board lacked jurisdiction to resolve the question of the nature of the trackage sought to be abandoned.² Consolidated Rail Corp. v. STB, 571 F.3d 13 (D.C. Cir. 2009). The Court of Appeals vacated the Board's order and ruled that the Special Court³ retains jurisdiction to resolve this question. City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition properly filed their complaint against Conrail in the District Court. While the case in District Court is pending, we find it appropriate to suspend further action in the abandonment and discontinuance proceedings. Because the nature of the trackage involved in these proceedings is being addressed in District Court, we will not reach a final decision until that issue is resolved.

We will hold these proceedings in abeyance pending a decision or direction from the District Court. The Section of Environmental Analysis will not proceed with the historic or environmental review process until and unless these proceedings resume by further order of the Board.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. These proceedings are held in abeyance pending further order of the Board.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

² In March 1976, the Special Court, a United States district court composed of three federal judges selected by the Judicial Panel on Multi-District Litigation, ordered the trustee or trustees of each railroad in reorganization to convey from several bankrupt railroads in the Northeast and Midwest region to Conrail the rail properties designated for transfer in the FSP.

³ The Special Court has been abolished and the jurisdiction and other functions of the Special Court have been assumed by the United States District Court for the District of Columbia. See 45 U.S.C. 719(b)(2).