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SERVICE DATE – JULY 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 251X)¹

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN CHOWAN COUNTY, NC

Decided: July 13, 2005

Norfolk Southern Railway Company (NSR) and North Carolina & Virginia Railway Company, Inc., The Chesapeake and Albemarle Division (NCVA) (referred to jointly as applicants), filed a joint notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service, for NSR to abandon, and for NCVA to discontinue service under a lease from NSR over, a 0.33-mile line of railroad between approximately milepost NS-73.67 and milepost NS-74.00 in Edenton, Chowan County, NC. Notice of the exemption was served and published in the Federal Register on July 16, 2004 (69 FR 42804-05).

By decision served on August 20, 2004, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to five environmental conditions, requiring NSR to: (1) consult with the U.S. Fish and Wildlife Service (FWS), regarding Federally listed threatened and endangered species, which may occur in the vicinity of the line proposed for abandonment, regarding the environmental effects of salvage activities on those species, and regarding what mitigation, if any, could be appropriate for any such effects; (2) consult with the North Carolina Department of Environment and Natural Resources regarding state-listed threatened and endangered species which may occur in the vicinity of the line proposed for abandonment, the environmental effects of salvage activities on those species and what mitigation, if any, could be appropriate for any such effects; (3) consult with the U.S. Army Corps of Engineers (Corps), regarding the details of the salvage activities that have occurred and what mitigation, if any, could be appropriate; (4) notify SEA of the results of these consultations; and (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are

¹ The notice served and published on July 16, 2004, embraced STB Docket No. AB-866X, North Carolina & Virginia Railroad Company, Inc., The Chesapeake and Albemarle Division—Discontinuance of Service Exemption—in Chowan County, NC.

50 years old or older until completion of the section 106 process of the National Historic Preservation Act.²

In a letter filed with the Board on July 8, 2005, NSR submitted a report of its consultation with FWS, the North Carolina Wildlife Resources Commission (NCWRC),³ and the Corps. NSR includes copies of letters from those agencies, with each agency's comments on the abandonment. Also, NSR provided a statement which it termed a notice of consummation, "unless the Board finds that additional consultation or other conditions remain outstanding." NSR states that, if the Board finds that any of the conditions it imposed remain outstanding, NSR requests an extension of time, until October 17, 2005, to file its notice of consummation.

In a letter that is attached to the NSR letter filed on July 8, 2005, FWS states that it appears that the abandoned area does not contain any Federally listed endangered or threatened species or critical habitat. SEA states that it believes that consultation with FWS has been completed and recommends that the consultation condition with FWS be removed.

In a letter that is attached to the NSR letter filed on July 8, 2005, NCWRC recommends that certain specific measures be taken during the removal of the bridge spanning Queen Anne Creek. SEA states that, based on NCWRC's letter, it recommends that the consultation condition regarding state-listed species be modified to read as follows: NSR shall comply with the recommendations set forth in NCWRC's May 6, 2005 letter during salvage activities to remove the Queen Anne Creek bridge.

In a letter that is attached to the NSR letter filed on July 8, 2005, the Corps states that there are navigable waters of the United States in the area proposed for abandonment that are subject to the Corps' permitting requirements. SEA states that, based on the comments of the Corps, it recommends that the consultation condition with the Corps be modified to read as follows: NSR shall submit final salvage plans to the Corps prior to beginning salvage activities of the Queen Anne Creek bridge and shall comply with the reasonable requirements of the Corps.

The Corps also states that the area proposed for abandonment is located in a coastal county subject to regulations under the Coastal Area Management Act, and that the Division of Coastal Management (DCM) should be contacted to determine requirements. SEA states that, in the Environmental Assessment served on July 23,

² By decision served May 9, 2005, the section 106 historic preservation condition was removed; the four other environmental conditions imposed in the August 20, 2004 decision remain in effect.

³ SEA states that the consultation condition regarding state-listed species imposed in the August 20, 2004 decision required consultation with the North Carolina Department of Environment and Natural Resources. SEA notes that the agency responsible for state listed species is NCWRC.

2004, it stated that DMC had submitted oral comments to NSR, stating that, as long as no dredge and fill activities would be conducted, no state water quality permits would be required. SEA states that, while NSR had stated in its environmental report that it does not intend to dredge and/or fill any materials in connection with the proposed abandonment, in light of the recent comments of the Corps and NCWRC, it is now unclear as to whether any dredge and/or fill activities would be conducted as part of NSR's plans to remove the bridge spanning Queen Anne Creek.

SEA therefore recommends that the following new condition be imposed: NSR shall submit final salvage plans to DCM prior to beginning salvage activities of the Queen Anne Creek bridge. If DCM determines that Coastal Zone Consistency Certification is required, NSR shall obtain consistency certification and notify SEA that it has obtained such certification prior to beginning any salvage activities, in accordance with the Coastal Zone Management Act at 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.

SEA states that the condition requiring NSR to notify SEA of the results of the consultation with the various agencies remains in effect.

Therefore, the following SEA recommendations will be adopted: (1) the consultation condition with FWS will be removed; (2) the consultation condition regarding state-listed species will be modified; (3) the consultation condition with the Corps will be modified; and (4) a Division of Coastal Management condition will be imposed.

In its request to extend the time to file its notice of consummation, NSR states that an extension will allow sufficient time to take any further action that may be required to meet any outstanding conditions and to consummate the abandonment. Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. Good cause has been shown. NSR's request will be granted and the deadline for filing the notice of consummation will accordingly be extended to October 17, 2005.

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. The FWS consultation condition imposed in the August 20, 2004 decision is removed.
3. Upon reconsideration, the exemption of the abandonment of the line described above is subject to: (1) modification of the consultation condition regarding state-listed species, to read as follows: NSR shall comply with the recommendations set forth in

NCWRC's May 6, 2005 letter during salvage activities to remove the Queen Anne Creek bridge; (2) modification of the consultation condition with the Corps, to read as follows: NSR shall submit final salvage plans to the Corps prior to beginning salvage activities of the Queen Anne Creek bridge and shall comply with the reasonable requirements of the Corps; (3) notification to SEA of the results of these consultations; and (4) the condition that NSR shall submit final salvage plans to the DCM prior to beginning salvage activities of the Queen Anne Creek bridge. If DCM determines that Coastal Zone Consistency Certification is required, NSR shall obtain consistency certification and notify SEA that it has obtained such certification prior to beginning any salvage activities, in accordance with the Coastal Zone Management Act at 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.

4. NSR's request for an extension of time until October 17, 2005, to exercise the abandonment authority is granted.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary