

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 290 (Sub-No. 355X)

**The Cincinnati, New Orleans and Texas Pacific Railway Company – Abandonment
Exemption – in Scott County, Tenn.**

BACKGROUND

In this proceeding, the Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Scott County, Tennessee. The rail line proposed for abandonment extends approximately 12.63 miles from milepost NR 0.0 at New River, Tennessee to milepost NR 12.63 near Sterling, Tennessee (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, CNOTP will be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

ENVIRONMENTAL REVIEW

CNOTP submitted an Environmental Report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. CNOTP served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

CNOTP states that no local traffic or overhead traffic has moved over the Line for at least two years. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or of recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 290 (Sub-No. 355X).

Salvage Activities

If abandonment authority is granted in this proceeding, CNOTP states that it would convey the Line to KT Group, LLC (KT Group), which would conduct salvage. Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present in the rail right-of-way, and regrading of the right-of-way. CNOTP anticipates that KT Group would not salvage crossties on the Line because they are not recoverable. CNOTP also states that the contour of the existing underlying roadbed would remain intact and existing drainage systems would not be altered during salvage. There are six bridges on the Line that would be conveyed to KT Group. These structures may be removed during salvage.

Land Use

In response to CNOTP's request for comment on the abandonment, the U.S. Natural Resource Conservation Service (NRCS) states that the abandonment, as proposed, would not result in the conversion of prime farmland. Because the proposed abandonment would occur within an existing rail right-of-way, OEA concurs with the conclusions of NRCS. Accordingly, no mitigation regarding the conservation of agricultural land is recommended.

The National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment to any geodetic survey markers that may be present in the project area. Accordingly, OEA is recommending a condition requiring CNOTP to consult with NGS prior to beginning salvage activities.

CNOTP requested comments from Scott County regarding the consistency of the proposed abandonment with existing land use plans, but has received no response to date. Because the proposed abandonment would be limited in scope and would take place within an existing rail right-of-way, OEA does not anticipate that the proposed abandonment would be inconsistent with any existing land use plans.

Water Resources

The Line crosses the New River and appears to cross several small streams. In its review of available geospatial data, OEA also concluded that the Line crosses areas that may contain wetlands.² Given the limited scope of proposed salvage activities, OEA believes that negative impacts to waterways and wetlands are unlikely to occur as a result of the proposed abandonment.

The Tennessee Department of Environment and Conservation, Division of Water Resources (TDEC) submitted comments stating that the proposed abandonment would be

² U.S. Fish and Wildlife Service, National Wetlands Inventory, <http://www.fws.gov/wetlands/Data/Mapper.html> (last visited January 30, 2015).

consistent with applicable water quality standards. TDEC also states that the proposed abandonment would not require a pollutant discharge permit under Section 402 of the Clean Water Act (33 U.S.C. § 1251). Because the proposed abandonment would not result in the discharge of pollutants or alter existing drainage systems, OEA concurs with the conclusions of TDEC. Accordingly, no mitigation regarding water quality is recommended.

CNOTP requested comments from the U.S. Army Corps of Engineers, Nashville District (the Corps) regarding the need for a permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). In its response, the Corps states that, because the proposed abandonment would not involve any work affecting streams or wetlands, a Section 404 permit would not be required. Because the proposed abandonment would not result in the discharge of dredge or fill material into any waterway, OEA concurs with the conclusions of the Corps. Accordingly, no mitigation regarding impacts to wetlands or waterways is recommended.

Hazardous Materials

CNOTP states that it has no knowledge of any hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. OEA's review has confirmed that there are no federally listed Superfund sites in the vicinity of the Line.³ Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is recommended.

Biological Resources

The U.S. Fish and Wildlife Service (USFWS) submitted comments identifying federally listed threatened and endangered species that may be located in the vicinity of the Line. OEA also conducted a search of the USFWS Information, Planning, and Conservation System (IPaC) in order to identify protected species.⁴ The table below shows the protected species known or thought to occur in Scott County, Tennessee, as identified by USFWS and by OEA's search.

³ Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited January 29, 2015).

⁴ U.S. Fish and Wildlife Service, Information, Planning, and Conservation System, <http://ecos.fws.gov/ipac/> (last visited January 29, 2015).

Protected Species in Scott County, Tennessee			
Group	Common Name	Scientific Name	Status
Clams	Alabama lampmussel	<i>Lampsilis virescens</i>	Endangered
	Cumberland bean	<i>Villosa trabalis</i>	Endangered
	Cumberland elktoe	<i>Alasmidonta atropurpurea</i>	Endangered
	Cumberlandian combshell	<i>Epioblasma brevidens</i>	Endangered
	Finerayed pigtoe	<i>Fusconaia cuneolus</i>	Endangered
	Littlewing pearlymussel	<i>Pegias fabula</i>	Endangered
	Oyster mussel	<i>Epioblasma capsaeformis</i>	Endangered
	Purple bean	<i>Villosa perpurpurea</i>	Endangered
	Tan riffleshell	<i>Epioblasma florentina</i>	Endangered
Fishes	Blackside dace	<i>Phoxinus cumberlandensis</i>	Threatened
	Cumberland darter	<i>Etheostoma susanae</i>	Endangered
	Duskytail darter	<i>Etheostoma percnurum</i>	Endangered
	Spotfin Club	<i>Erimonax monachus</i>	Threatened
Flowering Plants	Cumberland rosemary	<i>Conradina verticillata</i>	Threatened
	Cumberland sandwort	<i>Arenaria cumberlandensis</i>	Endangered
	Virginia spiraea	<i>Spiraea virginiana</i>	Threatened
Mammals	Indiana bat	<i>Myotis sodalist</i>	Endangered

USFWS identified critical habitat for three species—the Cumberland elktoe, the Cumberlandian combshell, and the Oyster mussel—within Scott County, Tennessee. OEA notes that, based on a search using the USFWS critical habitat mapping tool, the Line does not appear to be located near the critical habitat areas identified by USFWS.⁵

OEA notes that the Line crosses or is located adjacent to several waterways where aquatic protected species (fishes and/or clams) could potentially be present. Among the plant species identified by USFWS, Cumberland rosemary and Virginia spiraea are typically found in sandy to silty soils, such as may occur along streambeds, and may therefore be present in areas where the Line crosses streams. Cumberland sandwort typically occurs on sandstone cliff ledges and in shady areas along cliff lines, and is therefore unlikely to occur within the rail right-of-

⁵ U.S. Fish and Wildlife Service, Critical Habitat Portal, <http://ecos.fws.gov/ipac/> <http://ecos.fws.gov/crithab/> (last visited January 29, 2015).

way. Because salvage would be limited in scope and would take place within an existing rail right-of-way, OEA does not anticipate adverse impacts to any species that may be present in the project area. However, because one or more protected species may be present within or adjacent to the rail right-of-way, we are recommending a condition requiring CNOTP to consult with USFWS and to comply with that agency's reasonable recommendations. OEA is sending a copy of this EA to USFWS for review and comment.

Air Quality

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality.

Noise

Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Summary

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is providing a copy of this EA to USFWS for that agency's review and comment.

HISTORIC REVIEW

According to CNOTP, the Line was constructed in 1941 as the Brimstone Railroad. The Brimstone Railroad operated as a private carrier for the New River Lumber Company. Both the railroad and the lumber company were owned by the W.M. Ritter Company. The Interstate Commerce Commission authorized the Brimstone Railroad to operate as a common carrier in 1942. Brimstone Railroad subsequently abandoned the Line in 1965. CNOTP formed the New River Railway Company, a wholly-owned subsidiary, which acquired the physical properties of the Line and began operating as a common carrier in 1966.

There are six structures within the right-of-way (the Area of Potential Effect or APE) of the proposed abandonment. CNOTP states that these structures are bridges that are relatively short in length and ordinary in design and construction.

CNOTP served the Historic Report, including topographic maps of APE, on the Tennessee Historical Commission (State Historic Preservation Officer or SHPO), pursuant to 49 C.F.R. § 1105.8(c). To date, the SHPO has not provided comments. To the best of OEA's knowledge, the Line and its associated structures are not listed on the National Register of Historic Places (National Register). Because OEA has not been able to consider the SHPO's opinion, however, we are unable to determine whether the Line or any structures associated with it may be eligible for listing on the National Register. Accordingly, we are recommending a condition requiring CNOTP to retain its interest in and take no steps to alter the historic integrity

of all historic properties, including sites, buildings, structures and objects within the APE eligible for listing or listed in the National Register, until the Section 106 process has been completed. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area.⁶ The search identified one federally recognized tribe, the Eastern Band of Cherokee Indians of North Carolina, as potentially having knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment. Accordingly, OEA is sending a copy of this EA to that tribe for review and comment.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Prior to the commencement of any salvage activities, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) shall consult with the National Geodetic Survey (NGS). If NGS identifies geodetic station markers that may be affected by the proposed abandonment, CNOTP shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.**
- 2. Prior to the commencement of any salvage activities, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) shall consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of salvage activities on federally listed threatened and endangered species in the project area and shall comply with the reasonable recommendations of USFWS to mitigate any potential impacts. CNOTP shall report the results of any consultations with USFWS to the Board's Office of Environmental Analysis.**
- 3. The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) shall retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CNOTP shall report back to the Office of Environmental Analysis (OEA) regarding any**

⁶ National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited January 30, 2015).

consultations with the Tennessee Historical Commission (State Historic Preservation Officer or SHPO) and the public. CNOTP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption would not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

Requests for a notice of interim trail use (NITU) are due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to

the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-290 (Sub-No. 355X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: February 9, 2015.

Comment due date: February 24, 2015.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.