

SERVICE DATE – MAY 25, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 665X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN HARLAN AND
LETCHER COUNTIES, KY

Decided: May 24, 2006

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 12.99-mile line of railroad on its Southern Region, Huntington Division West, Cumberland Valley Subdivision, in Harlan and Letcher Counties, KY. The line consists of a portion of the Poor Fork branch between milepost 0WC 261.1, near Cumberland, and milepost 0WC 262.3, at Cumberland Junction, and the entire Scotia Branch between milepost 0WD 262.21, at Cumberland Junction, and milepost 0WD 274.0, near Scotia at the end of the line. Notice of the exemption was served and published in the Federal Register on April 26, 2006 (71 FR 24772). The exemption is scheduled to become effective on May 26, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 1, 2006, and recommended that conditions be imposed on any decision granting abandonment authority. In the EA, SEA noted that CSXT had served its environmental report on a number of appropriate Federal, state and local agencies, but none had responded. Based on the limited information available, SEA stated in the EA that it could not fully determine if salvage activities would cause a significant environmental impact on the area surrounding the proposed abandonment. SEA, therefore, provided a copy of the EA to the following agencies for review and comment: U.S. Fish and Wildlife Service (USFWS); U.S. Environmental Protection Agency (USEPA); U.S. Department of Commerce, National Geodetic Survey (NGS); U.S. Army Corps of Engineers (Corps); and the National Park Service (NPS), and recommended that CSXT consult with the above-referenced agencies, as necessary, prior to commencement of any salvage activities. The specific conditions recommended by SEA in the EA are that, prior to commencement of any salvage activities, CSXT consult with: (1) the Corps, regarding its requirements and, if applicable, comply with those requirements; (2) USEPA (a) to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management and sediment control requirements are addressed and to report the results of these consultations in writing to SEA, and (b) to ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements and compliance with those requirements; (3) USFWS, regarding potential impacts from salvage activities to Federally listed threatened and endangered species that may occur in the vicinity of the line, and to report the results of these consultations in writing to SEA; (4) NPS, Southeast Region, and the Kentucky Department of Parks, regarding any impact on wildlife sanctuaries,

refuges, national or state parks or forests, and to report the results of these consultations in writing to SEA.

In the EA, SEA also noted that it conducted a search of NPS's Native American Consultation Database (Database) to identify Federally recognized tribes that may have an interest in the project. SEA indicated that, according to the Database, the Delaware Nation, the Eastern Band of Cherokee Indians, the Miami Tribe of Oklahoma, and the Peoria Tribe of Indians of Oklahoma may have an interest in the proposed abandonment. SEA stated that it would ensure that the tribes receive a copy of the EA for their review and comment, and recommended that, in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT be required to immediately cease all work and notify SEA, interested Federally recognized tribes, and the Kentucky Heritage Council (State Historic Preservation Officer or SHPO), after which SEA will consult with CSXT and the parties mentioned above to determine whether any mitigation measures are necessary.

Comments to the EA were due May 16, 2006. By letter dated April 28, 2006, CSXT forwarded to SEA a copy of a letter, dated April 19, 2006, from Mr. Larry Sowder of USEPA, indicating that the grading activity associated with proposed salvage will result in the disturbance of more than one acre of land and will require a Stormwater General Permit for Construction Activities under section 402 of the Clean Water Act. Therefore, SEA recommends that CSXT, prior to commencement of any salvage activities, consult with USEPA regarding its permit requirements and comply with its reasonable requirements. Also, NGS responded, stating that it has identified approximately 13 geodetic survey markers within the proposed abandonment. Accordingly, SEA recommends that CSXT notify NGS at least 90 days prior to beginning salvage activities so that plans can be made for the possible relocation of the geodetic station markers. Accordingly, the environmental conditions recommended by SEA in the EA, as modified, and the new condition recommended by SEA will be imposed. 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 is subject to the conditions that CSXT, prior to commencement of any salvage activities, consult with: (1) the Corps, regarding its requirements and, if applicable, comply with those requirements; (2) USEPA (a) regarding its permit requirements and shall comply with its reasonable requirements, and (b) to ensure appropriate consideration of NYDES requirements and compliance with those requirements; (3) USFWS, regarding potential impacts from salvage activities to Federally listed threatened and endangered species that may occur in the vicinity of the line, and to report the results of these consultations in writing to SEA; and (4) NPS, Southeast Region, and the Kentucky Department of Parks regarding any impacts on wildlife

sanctuaries, refuges, national or state parks or forests, and to report the results of these consultations in writing to SEA; and to the conditions (5) that CSXT notify NGS at least 90 days prior to beginning salvage activities so that plans can be made for the possible relocation of the geodetic station markers identified by NGS; and (6) that, in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT immediately cease all work and notify SEA, interested Federally recognized tribes, and the SHPO, after which SEA will consult with the SHPO, interested Federally recognized tribes, and CSXT to determine whether any mitigation measures are necessary.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary