

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 261X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN SPARTANBURG, SC

Decided: August 18, 2005

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.92-mile line of railroad between former milepost W 68.69 and former milepost W 70.61, in Spartanburg, SC.¹ Notice of the exemption was served and published in the Federal Register on July 20, 2005 (70 FR 41813-14).² The exemption is scheduled to become effective on August 19, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 22, 2005. In the EA, SEA states that the South Carolina Department of Health and Environmental Control's Bureau of Water (BW) submitted comments about the placement of fill material into waters of the state, including jurisdictional wetlands, and has determined that a certification from BW and a U.S. Army Corps of Engineers permit would be required. According to BW, if a state land disturbance permit from the Sediment, Erosion and Stormwater program is required, the placement of fill material into non-jurisdictional wetlands would also require compensation for the impacts to those wetlands. In addition, a Navigable Waters Permit would be required for all construction within navigable waters of South Carolina. BW recommends that NSR be required to consult with the South Carolina Department of Health and Environmental Control's Bureau of Land and Waste Management (BLWM) regarding the disposal of debris. Even though NSR states that there are no waterways associated with the line, based on the comments of BW, SEA recommends that NSR be required to consult with BW and BLWM prior to beginning salvage activities.

¹ According to NSR, the line mileposts are described as former because a new main line replaced the subject line as the main line many years ago and that the construction of the new main line resulted in the subject line becoming a stub-end branch line. NSR also states that the milepost numbers were reused on the new line and no new milepost designations were given to the subject line.

² The Federal Register notice published on July 20, 2005, was corrected by Federal Register notice published on August 3, 2005 (70 FR 44719), to reflect the correct United States Postal Service Zip Codes 29302 and 29306.

Comments to the EA were due by August 8, 2005. No comments were received by the due date. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

SEA also indicated in the EA that the right-of-way may be suitable for other public use following abandonment. On July 26, 2005, the Palmetto Conservation Foundation (PCF) filed a request under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way, and for a public use condition under 49 U.S.C. 10905. PCF requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms.

PCF also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on July 27, 2005, NSR states that it consents to negotiating with PCF for interim trail use.

Because PCF's request complies with the requirements of 49 CFR 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NSR may fully abandon the line, provided the conditions imposed in this decision and notice are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 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. See 49 CFR 1152.28(a)(2). Although PCF has not requested a specific time period, presumably because NSR has agreed to make a trail on this line available for public use, a 180-day public use condition will be imposed, commencing from the August 19, 2005 effective date of the exemption to coincide with the NITU negotiating period.

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. If a trail use agreement is reached on a portion of the right-of-way, NSR must keep the remaining right-of-way intact for the remainder of the 180-day 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, NSR is not required to deal exclusively with PCF, 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 July 20, 2005, and corrected on August 3, 2005, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the August 19, 2005 effective date of the exemption (until February 15, 2006), and subject to the condition that NSR shall consult with BW and BLWM prior to beginning salvage activities.
3. Consistent with the conditions imposed in this decision and notice, NSR may discontinue service and salvage track and related materials. NSR shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before February 15, 2006, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by February 15, 2006, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary