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SERVICE DATE – NOVEMBER 1, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 266X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
MCDOWELL COUNTY, NC

Decided: October 31, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 3.5 miles of railroad between milepost SB 205.0 and milepost SB 208.5, near Marion, in McDowell County, NC. Notice of the exemption was served and published in the Federal Register on June 8, 2006 (71 FR 33334).¹

By decision and notice of interim trail use or abandonment (NITU) served on July 7, 2006, the proceeding was reopened. The Board granted a 180-day period for the City of Marion, NC, to negotiate an agreement with NSR for interim trail use/rail banking and for a public use condition.² In addition, the following four environmental conditions were imposed in that decision: (1) prior to commencement of any salvage activities, NSR shall consult with the North Carolina Department of Environment and Natural Resources (NCDENR) to ensure that any concerns regarding applicable stormwater management and sediment control requirements are addressed; NSR shall report the results of its consultations in writing to SEA prior to the onset of salvage operations; (2) to ensure appropriate consideration of the requirements of the National Pollutant Discharge Elimination System (NPDES), NSR shall consult with NCDENR prior to commencement of any salvage activities and shall comply with the reasonable NPDES requirements; (3) NSR shall notify the National Geodetic Survey (NGS) at least 90 days prior to commencement of any salvage activities in order to plan for the possible relocation by NGS of geodetic station markers; and (4) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during NSR's salvage activities, NSR shall immediately cease all work and notify the Board's Section of Environmental Analysis (SEA), interested Federally recognized tribes, and the North Carolina Department of Cultural Resources (SHPO). SEA shall then consult with the SHPO, interested Federally recognized tribes, and NSR to determine whether any mitigation measures are necessary.

¹ The exemption was scheduled to become effective on July 8, 2006.

² The NITU negotiating period and the public use condition are scheduled to expire on January 4, 2007.

SEA states that, in a letter filed September 5, 2006, Mr. James Paschall, NSR's counsel, reported that Mr. Richard Dietz, NSR's Engineer System Designs, had a telephone conversation on August 31, 2006, with Mr. Michael Parker, an environmental specialist for NCDENR regarding the two previously imposed stormwater conditions. According to NSR, NCDENR has requested that silt erosion fencing be installed along the down slope areas abutting the bridges prior to initiating salvage activities, and that, following salvage, all disturbed areas be stabilized with a vegetative cover. In the letter, NSR agreed to so comply and added that, during the same conversation, Mr. Parker advised that NSR's compliance with the aforementioned condition will also satisfy the second consultation condition. Based on the information provided, SEA finds that the consultation conditions pertaining to stormwater management and sediment control requirements have been satisfied and recommends that the conditions be removed.

SEA also states that NSR has agreed to insert language into its contract documents that requires the salvage contractor to cease all work and contact appropriate agencies and tribes in the event that archaeological sites, human remains, funerary items or associated artifacts are discovered within the area of proposed salvage. Therefore, SEA finds that appropriate steps will be taken to ensure conformance with the archaeological condition and recommends that the condition be removed.

Finally, SEA states that NSR has consulted with NGS in accordance with the NGS consultation condition and has requested that the condition be removed. However, SEA states that, according to an attached e-mail from Mr. Simon Monroe at NGS, approximately 16 geodetic markers may be located in the area of the proposed abandonment. SEA indicates that NSR will still need to provide 90-day advance notice to NGS prior to initiating salvage activities to relocate any markers within the area of disturbance. SEA has therefore determined that further consultation will be needed and recommends that the NGS condition remain in effect.

Accordingly, the proceeding will be reopened and the previously imposed stormwater conditions (conditions 1 and 2) and the archaeological condition (condition 4) will be removed. The NGS consultation condition (condition 3) will remain in effect.

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 stormwater conditions and the archaeological condition imposed in the July 7, 2006 decision and notice are removed, and the NGS consultation condition imposed in that decision will remain in effect.

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

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

Vernon A. Williams
Secretary