

#EO-1609
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SURFACE TRANSPORTATION STB
OFFICE OF ENVIRONMENTAL ANALYSIS

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 449 (Sub-No. 3X)

February 18, 2011

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:
(X) Notice of Exemption (X) Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

RECOMMENDATION: Remove Section 106 Condition in AB 449 (Sub-No. 3X)
Western Kentucky Railway, LLC – Abandonment
Exemption – Webster, Union, Caldwell, and Crittenden
Counties, Ky.

In this proceeding, the Western Kentucky Railway, LLC (WKRL) filed a notice seeking approval authority to abandon 5 lines of railroad totaling 39 miles in length in Webster, Union, Caldwell, and Crittenden Counties, Kentucky. The Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on February 1, 2011 for public review and comment. In the EA, OEA recommended 3 environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

OEA received 1 comment during the 15-day comment period. The comment is summarized below. In this Final EA, OEA is recommending that 1 environmental (historic) condition recommended for imposition in the EA be removed. The condition required WKRL to retain its interest in and take no steps to alter the historic integrity of a bridge (bridge at Blackford) within the project right-of-way (the Area of Potential Effect) that may be eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, has been completed and the Board has removed this condition.

In the attached letter of January 3, 2011, the Tourism, Arts and Heritage Cabinet, Kentucky Heritage Council (State Historic Preservation Office or SHPO) commented that it did not have enough information to determine if the bridge at Blackford was eligible for listing in the National Register, but determined that the proposed abandonment would have no adverse effect on historic resources as long as ground disturbance was kept to a minimum and the bridge at Blackford was retained during the salvage process. In a follow-up discussion with the SHPO on February 10, 2011, the SHPO informed OEA that it did not need any additional information on the bridge because it understood that the bridge would not be altered or removed during the salvage process. The SHPO also reaffirmed its position that the proposed abandonment would have no adverse effect on the rail line but wanted assurance that it would be notified, should there be any future actions on the bridge following abandonment. OEA explained that the Board's authority to regulate any actions on the rail line, including the Section 106 consultation process, would end once the abandonment was consummated. As a remedy, WKRL agreed to write a letter for the SHPO's concurrence stating that it would notify the SHPO of any future actions on the bridge that involved alteration or removal. The attached letter of February 11, 2011 from WKRL with the SHPO's February 16, 2011 concurrence indicates that this process has been completed.

In the attached correspondence of January 3, 2011, the SHPO has determined that the proposed abandonment would have no adverse effect on National Register listed or eligible properties affected by this undertaking. The documentation for this finding, as specified at 36 CFR 800.11 (d), consists of the railroad's historic report, all relevant correspondence, and the EA, which have been made available to the public through the Board's website. OEA is therefore recommending that the Section 106 condition recommended for imposition in the EA for this proceeding be removed. This completes the Board's responsibilities under Section 106 of the NHPA.

OEA recommends that 2 other conditions in the EA be imposed on any decision granting abandonment authority as follows:

1. Prior to commencement of any salvage activities, the Western Kentucky Railway, LLC (WKRL) shall consult with the United States Army Corps of Engineers (USACE) regarding its requirements and, if applicable, shall comply with the reasonable requirements of the USACE.
2. WKRL shall consult with the U.S. Department of Commerce, National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

SEA CONTACT: Diana Wood 
(202) 245-0302
woodd@stb.dot.gov

Attachments



#E1-18455

STEVEN L. BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL

MARCHETA SPARROW
SECRETARY

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PHONE (502) 564-7005
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MARK DENNEN
EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

January 3, 2011

Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St., Suite 1000
Philadelphia, PA 19103-7041

**Re: Western Kentucky Railway LLC Abandonment in Webster, Union, Caldwell, and
Crittenden Counties, KY STB Docket No. AB-449 (Sub. No. 3X)**

Dear Mr. Hocky:

The State Historic Preservation Office has received for review and comment the environmental/historic report for the above referenced project. According to your submission, notice of this abandonment was submitted to our office but a response was not received.

Our original notice of this abandonment was received on June 10, 2010. We responded in a letter addressed to Carol Lydon of your office on July 7, 2010. This letter is included in Exhibit B of your document. Please update Section 7 of your Historic Report to reflect that a response was received from our office.

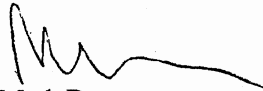
Attachment F of this report identified only three structures over 50 years of age near the abandonment lines. These included an old mine and its buildings in Clay which are near the track, a bridge located at Blackford, and the former locomotive shop in Clay, all located along Line 2 (between MP 0.0 at Blackford and MP 3.8 at Pyro Wye, and between MP 3.8 and 8.5 at Clay).

Based on the photographs provided, the mine buildings and the locomotive shop and associated tank structure do not appear to be eligible for listing in the National Register of Historic Places. We do not have enough information to determine whether the bridge is eligible for listing. However, we maintain our original position that the undertaking will have **No Adverse Effect** on historic properties so long as no subsurface disturbance is planned in the removal of remaining track, salvage does not require the use of heavy machinery that creates additional ground disturbance, and the bridge is left in place as was indicated in the original submission.

Page 2
Eric M. Hocky
1/3/2011

If any of these conditions have changed since we were originally contacted, or if previously unidentified historic resources over 50 years of age are discovered in the course of work that results from the abandonment, additional consultation under Section 106 of the National Historic Preservation Act will be required. Questions regarding these comments can be directed to Jill McNutt of my staff at (502) 564-7005, extension 121.

Sincerely,



Mark Dennen
Executive Director and
State Historic Preservation Officer

MD:jm



Eric M. Hocky
Direct Dial 215 640 8523
Email: ehocky@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

VIA E-MAIL

Kentucky Heritage Council
The State Historic Preservation Office
300 Washington Street
Frankfort, KY 40601

February 11, 2011

Attention: Jill McNutt

Re: Western Kentucky Railway, LLC Abandonment
STB Docket No. AB-449 (Sub-No. 3X)

Dear Ms. McNutt:

We are writing to follow up on the comments that your office filed in the above referenced abandonment proceeding before the Surface Transportation Board ("STB"), and our subsequent discussions.

It is our understanding that the State Historic Preservation Office does not object to grant by the STB of abandonment authority to Western Kentucky Railway, LLC ("WKRL") without a historic preservation condition.

Notwithstanding any grant of abandonment authority by the STB, WKRL hereby confirms its representation to you that it will not alter or remove the bridge at Blackford, KY, until it has consulted further with the State Historic Preservation Office.

Pittsburgh

Philadelphia

Princeton

Wheeling

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Kentucky Heritage Council
Page 2

February 11, 2011

Please confirm that the foregoing is correct and acceptable to the Kentucky Heritage Council by signing below and returning a copy to me.

Thank you for your cooperation.

Respectfully,

A handwritten signature in dark ink, appearing to read "Eric M. Hocky".

Attorneys for
Western Kentucky Railway, LLC

EMH/e

cc: Diana Wood, STB (by e-mail)

Agreed to and accepted:
Kentucky Heritage Council

By: A handwritten signature in dark ink, appearing to read "Mark Dennen".
Mark Dennen
Executive Director and
State Historic Preservation Officer

Dated: 2/16/2011