

SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS

EO-1299

CG

POST ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS
IN STB DOCKET NO. AB-286 (Sub-No. 6X)

September 29, 2009

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

SEA served an Environmental Assessment (EA) for this proceeding on September 11, 2009 for public review and comment. In the EA, SEA recommended the following two environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment:

1. Prior to the commencement of any salvage activities, the New York, Susquehanna and Western Railway Corporation (NYS&W) shall consult with the U.S. Fish and Wildlife Service (USFWS) to determine if the proposed abandonment could adversely impact habitat of the Indiana bat (*Myotis sodalis*), a Federally listed endangered species, or the Bog turtle (*Clemmys muhlenbergii*), a threatened species. (NYS&W) shall report the results of this consultation in writing to the Board's Section of Environmental Analysis prior to the onset of salvage activities.
2. The New York, Susquehanna and Western Railway Corporation (NYS&W) 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. NYS&W shall report back to the Section of Environmental Analysis regarding any consultations with the New York State Historic Preservation Office and the public. NYS&W 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.

Comments on the EA

By letter dated September 25, 2009, the New York, Susquehanna and Western Railway Corporation (NYS&W), provided its comments to the Board in response to the EA (see attached). In its letter, NYS&W recommended that the Board remove both of the above conditions based on two environmental comments it received (both comments are attached to the

NYS&E letter). We agree. Both comments are summarized below.

The first comment to NYS&W was submitted by the U.S. Fish and Wildlife Service on August 4, 2009 indicating that the proposed abandonment would have "no effect" on any endangered species and that no further Endangered Species Act coordination is required. SEA concurs with this recommendation.

The second comment was provided to NYS&W by the New York State Historic Preservation Office (SHPO). In its September 21, 2009 letter to the railroad, the SHPO stated that the proposed action would have "No Adverse Effect" upon any National Register of Historic Places eligible or listed properties. SEA concurs with this recommendation and finds that the Section 106 process of the National Historic Preservation Act has been completed.

Conclusions

The comment period for the EA in this proceeding has ended. Based on the comments received, SEA recommends that the two environmental conditions originally recommended in the EA should be removed. SEA believes that, as recommended, the proposed action will not significantly affect the quality of the human environment.

SEA CONTACT: Catherine Glidden, 202-245-0293

CG

ATTORNEYS AT LAW SINCE 1895

VIA ELECTRONIC FILING

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20024

September 25, 2009

Re: The New York, Susquehanna and Western Railway Corporation
- Abandonment Exemption - In Oneida County, NY
STB Docket No. AB-286 (Sub-No. 6X)
Comments to Environmental Assessment

Dear Secretary Quinlan:

On September 11, 2009, the Board's Section of Environmental Analysis ("SEA") issued its Environmental Assessment ("EA") in this proceeding. This letter is being filed by the applicant The New York, Susquehanna and Western Railway Corporation ("NYS&W") in response to the EA's request for comments which are due September 28, 2009.

SEA has requested that the Board impose two environmental conditions on the abandonment authorized in this proceeding. For the reasons set forth below, NYS&W does not believe that the conditions are necessary.

(1) SEA recommends further consultation with the US Fish and Wildlife Service ("USFWS") based on listings in USFWS's website about possible endangered species in the area. However, subsequent to the filing of its initial Environmental and Historic Report, NYS&W received a further response from USFWS dated August 3, 2009, indicating no further coordination or consultation was required. A copy of the USFWS letter is enclosed with these comments. (Applicant inadvertently did not forward a copy of the letter to SEA thinking USFWS would have done so.)

(2) SEA recommends a hold on consummation and salvage until the Section 106 historical review process has been completed. By letter dated September 21, 2009, the New York State Office of Parks, Recreation and Historic Preservation ("SHPO") confirms that it has now completed its Section 106 review, and that it has found that the abandonment project will have "No Adverse Effect." A copy of the SHPO letter is enclosed with these comments.

Pittsburgh

Philadelphia

Princeton

Wheeling

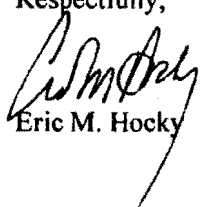
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215 640 8500
215 640 8501 Fax

Hon. Anne K. Quinlan
Acting Secretary
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September 25, 2009

Based on these additional responses received by NYS&W that SEA did not have when completing the EA, NYS&W requests that the Board not impose any environmental conditions on the abandonment.

Respectfully,


Eric M. Hocky

EMH/c

Enclosures

cc: Catherine Glidden, SEA (by email; w/encls.)
NYSW (by email; w/encls.)
All persons on service list (by mail; w/encl.)



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office

3817 Luker Road

Corland, NY 13045

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo>

To: Carol Lydon

Date: Aug 3, 2009

USFWS File No: 70739

Regarding your: ☒ Letter ☐ FAX ☐ Email

Dated: July 24, 2009

For project: New York, Susquehanna and Western Railway Corporation, Fay Street Branch Abandonment

Located:

In Town/County: City of Utica / Oneida County

Pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the U.S. Fish and Wildlife Service:

☒ Acknowledges receipt of your "no effect" and/or no impact determination. No further ESA coordination or consultation is required.

☐ Acknowledges receipt of your determination. Please provide a copy of your determination and supporting materials to any involved Federal agency for their final ESA determination.

☐ Is taking no action pursuant to ESA or any other legislation at this time but would like to be kept informed of project developments.

As a reminder, until the proposed project is complete, we recommend that you check our website (<http://www.fws.gov/northeast/nyfo/es/section7.htm>) every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project area is current. Should project plans change or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

USFWS Contact(s):

Sandra L. Dixon 08-03-2009

Supervisor:

[Signature]

Date:

08-04-2009



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

David A. Paterson
Governor

Carol Ash
Commissioner

September 21, 2009

Carol D. Lydon, Esq.
Thorp Reed & Armstrong
2005 Market St. 1000
Philadelphia, New York 19103

Re: STB Docket No. AB-286 (Sub. No. 6X)
Fay St. Branch Abandonment/
NY Susquehanna & Western railway
MP 284.80- MP 285.22
C/UTICA, Oneida County
09PR03546

Dear Ms. Lydon:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO) with regard to the abandonment of 0.42 miles of track of the former New York, Susquehanna and Western Railroad in the City of Utica. We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966

Based upon this review, it is the SHPO opinion that your project will have No Adverse Effect upon cultural resources in or eligible for inclusion in the National Registers of Historic Places.

If you have any questions regarding this review, please call me at (518) 237-8643, extension 3283 or email me at james.warren@oprhp.state.ny.us.

Sincerely,

James Warren
Historic Sites Restoration Coordinator