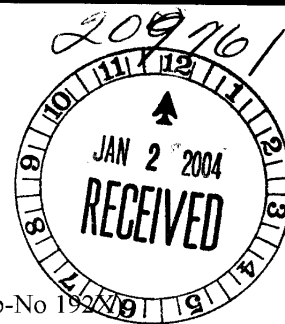


BEFORE THE SURFACE TRANSPORTATION BOARD

Norfolk Southern Railway Company)
-- Abandonment Exemption -- in)
Anderson and Woodford Counties, KY)

) Docket No. AB-290 (Sub-No 192X)



Joint Motion of Rails-to-Trails Conservancy and Tyrone
Bridge and Rail Company to Extend the Time Period for Negotiation
of an Interim Trail Use/Railbanking Agreement and to Substitute
Tyrone Bridge and Rail Company as Interim Trail Manager

ENTERED
Office of Proceedings

JAN 02 2004

Date of
Public Record

Pursuant to 49 C.F.R. § 1152.29(f), Rails to Trails Conservancy (RTC) and Tyrone Bridge and Rail Company (TBRC) hereby jointly move the Surface Transportation Board (STB or Board) to extend the time period for negotiation of a mutually acceptable interim trail use/railbanking agreement in this proceeding for an additional 180 days, up to and including July 2, 2004, and to substitute TBRC as the interim trail manager for the rail line in the above-captioned proceedings. A copy of TBRC's statement of willingness to assume full responsibility for management of, and liability and payment of taxes for, the right-of-way, is attached as Exhibit A, accompanied by a check for \$150. This motion has the consent of Norfolk Southern Railroad Corporation (NS) (See Letter attached as Exhibit H).

By decision served February 7, 2001, the Rails to Trails Conservancy (RTC) was recognized as the negotiating party, under the National Trails System Act, 16 U.S.C. § 1247(d), to negotiate with NS for the use of the subject right-of-way, which extends from M.P. 0.7-LL at Lawrenceburg, to M.P. 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) (Trails Act).¹ A copy of this decision is attached as Exhibit B. By decisions

¹ Norfolk Southern Railway Company -- Abandonment Exemption -- in Anderson and Woodford Counties, KY, Dkt. No. AB-290 (Sub-No. 192X), served Feb. 7, 2001.

served on July 13, 2001, January 14, 2002, July 10, 2002, and January 6, 2003, which are attached as Exhibits C, D, E, F, and G, this Board extended the NITU until January 10, 2002, July 10, 2002, January 6, 2003, July 7, 2003, and January 4, 2004, respectively.

RTC has been actively negotiating with the railroad for the preservation of this corridor as an interim trail use under Section 8(d). As previously noted, TBRC, a newly formed nonprofit corporation based in Woodford County, KY, has expressed an interest in cooperating with the Rails-to-Trails Conservancy, Anderson and Woodford counties, and (potentially) the state of Kentucky, in developing and managing this corridor as an interim trail, and possibly as an excursion "rail-with-trail." TBRC has now secured its tax exempt status, and is able to negotiate directly with NS for the acquisition of the line. Therefore, the parties are now filing a motion to substitute TBRC for RTC as interim trail manager. In the meantime, an additional extension of time is necessary in order to permit TBRC to negotiate terms of title transfer with the railroad, and to deal with issues relating to the transfer of a large bridge on the line. TBRC therefore wishes to extend the interim trail use negotiating period in order to assume negotiations of an interim trail use/railbanking agreement with the railroad providing for the transfer of the corridor to TBRC under Section 8(d). It is necessary for the negotiation period under the NITU to be extended for an additional 180 days, up to and including July 2, 2004, in order to successfully preserve this corridor for interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990) (extensions of time promote the establishment of trails and railbanking consistent with the National Trails System Act).

Since the issuance of the NITU, NS at all points has maintained an intent to transfer the

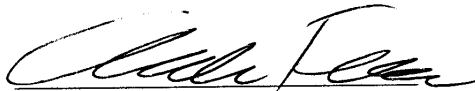
line in question intact for interim trail use. As indicated in the attached letter from Norfolk Southern, the railroad has not sold, or offered for sale, any parcels of land that would interfere with interim trail use and railbanking of the portion of the corridor that is covered by the NITU. The line remains intact and throughout the period, the railroad has been negotiating with the railroad for the sale of the corridor intact. Accordingly, the Board retains jurisdiction to further extend the NITU to continue bona fide and active negotiations for interim trail use of the line.

In similar instances, this Board has reopened proceedings to permit the issuance of orders implementing section 8(d) for rail lines.² The STB's authority to extend a NITU was upheld in Birt v. STB, 90 F.3d 580 (D.C. Cir. 1996). Here, the parties merely seek an extension in the period for negotiation provided in a previously-issued NITU. Such an extension will promote and further the purposes of the Trails Act, and allow the substitute trail manager an opportunity to negotiate for transfer of the line under Section 8(d).

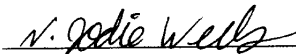
For the reasons stated, RTC and TBRC jointly request that STB: (1) vacate the existing order that recognizes RTC as the interim trail manager for the line; (2) issue a replacement order stating that TBRC is now the railbanker/interim trail manager for the line, effective as of date the new order is issued; and (3) extend the NITU negotiation period for an additional 180-day period, through July 2, 2004.

² See, e.g., Missouri-Kansas-Texas Railroad--Abandonment--in Pettis and Henry Counties, MO, Dkt. No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

Respectfully submitted,



Andrea C. Ferster
General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W., 10th Fl.
Washington, D.C. 20036
(202) 974-5142



N. Jodie Wells, President
The Tyrone Bridge and Rail Company, Inc.
240 Boston Drive
Versailles, KY 40383
(859)-873-4156

December 30, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of December, 2003, I have served a true and accurate copy of the foregoing motion on the following party by first-class mail, postage pre-paid:

James R. Paschall, General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510-9241


Andrea C. Ferster

BEFORE THE SURFACE TRANSPORTATION BOARD

Norfolk Southern Railway Company)
in Anderson and Woodford Counties, KY) AB Docket No. AB-290 (Sub-No 192X).
-- Abandonment Exemption --)
)

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, The Tyrone Bridge and Rail Company, Inc. is willing to assume 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 in the above-captioned proceeding, owned by Norfolk Southern Railway Company (NSR).

The property extends from M.P. 0.7-LL at Lawrenceburg, to M.P. 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles.¹ A map depicting the right-of-way is attached.

The Tyrone Bridge and Rail Company, Inc. acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on NSR on the same date it is being served on the Surface Transportation Board.

N. Jodie Wells

N. Jodie Wells, President
The Tyrone Bridge and Rail Company, Inc.
240 Boston Drive
Versailles, KY 40383

Dec 20, 2003
Date

On behalf of: The Tyrone Bridge and Rail Company, Inc.

¹ See Norfolk Southern Railway -- Abandonment Exemption -- in Anderson and Woodford Counties, KY, Docket No. AB-290 (Sub-No 192X), served December 27, 1999

Exhibit A

31617

DO

SERVICE DATE - FEBRUARY 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: February 6, 2001

The Norfolk Southern Railway Company (NSR) and the Rails to Trails Conservancy (RTC) (collectively petitioners) have filed a joint petition to reopen the abandonment proceeding and issue a notice of interim trail use/rail banking (NITU) under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and if necessary, to extend the deadline for the filing of a notice of consummation of the abandonment authority. The petition will be granted for the reasons discussed in this decision.

BACKGROUND

NSR filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon its line of railroad between milepost 0.7-LL at Lawrenceburg, and milepost 3.5-LL at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The notice was served and published in the Federal Register on December 27, 1999 (64 FR 72376). The notice stated that, if consummation had not been effected by NSR's filing of a notice of consummation by December 27, 2000, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision served January 25, 2000 (January 25 decision), the Board reopened the proceeding. The January 25 decision denied a request made by the Anderson County Fiscal Court (Anderson County) for issuance of a NITU,¹ but granted the request for imposition of a public use condition for a period of 180 days until July 24, 2000, and imposed the condition that NSR retain its interest in and take no steps to alter the historic integrity of the entire rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. By decision served November 13, 2000 (November 13 decision), the Board again reopened the

¹ By letter to the Board dated January 19, 2000, NSR indicated that it was unwilling to negotiate with Anderson County, as it had agreed to convey its interest in the line to the Tyrone Rail & Bridge Society, Inc. (TRBS). However, NSR also indicated in its letter that, "[i]n the unforeseen event that the transaction is not consummated, NSR will reconsider whether it should negotiate for interim trail use, should the offer still be outstanding."

proceeding and, based on a recommendation from the Kentucky State Historic Preservation Officer (SHPO), removed the section 106 historic preservation condition imposed in the January 25 decision.²

On January 11, 2001, petitioners requested that the Board reopen the proceeding and issue a NITU pursuant to the Trails Act to permit interim trail use/rail banking negotiations on the right-of-way. Petitioners further requested that, if necessary, the Board's regulations at 49 CFR 1152.29(e)(2)³ prescribing a deadline for filing a notice of consummation of the abandonment be waived and that the deadline be extended to January 12, 2001, or a later date, if required to permit issuance of a NITU.⁴

DISCUSSION AND CONCLUSIONS

In the petition, NSR states that it had entered into an agreement to transfer the property to TRBS, including an agreement that TRBS would accept the historic preservation covenants discussed above. NSR further states that, at the time the Board issued its November 13 decision, the transaction with TRBS had not yet closed but notes that it had every reason to believe that TRBS would complete the transaction and anticipated that the closing would take place promptly and certainly prior to December 27, 2000, much less January 12, 2001. NSR states that it

² The November 13 decision anticipated that the entire right-of-way would be deeded to TRBS, which had evidently agreed to retain and maintain the entire rail line, including all bridges and trestles eligible for inclusion in the National Register of Historic Places.

³ Under 49 CFR 1152.29(e)(2), a railroad has 1 year from the service of the date of the decision permitting abandonment to file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation.

⁴ As further discussed below, petitioners state that NSR did not learn that TRBS would be unable to accept the property until December 26, 2000, one day before expiration of the 1-year period for filing a notice of consummation set forth in 49 CFR 1152.29(e)(2). Nonetheless, NSR was of the opinion that the deadline for providing notice of consummation here was January 12, 2001 (60 days after service of the Board's November 13 decision removing the historic preservation condition). Because of confusion regarding whether the notice of consummation deadline was December 27, 2000, or January 12, 2001, petitioners request an extension or waiver of the deadline for filing a notice of consummation if it is determined that the deadline has just passed.

intended to issue its notice of consummation of abandonment at the time the transaction closed.⁵ On December 26, 2000, however, NSR learned that TRBS was permitting its non-profit corporation charter to lapse and would no longer exist as a corporate entity. Thus, TRBS could not accept ownership of the line. NSR also learned that Anderson County was no longer interested in acquiring the property for interim trail use. NSR indicates that it was faced with a choice between exercising the abandonment at the last minute (but being unable to convey the property subject to the historic preservation covenants) or finding another transferee, presumably a trail sponsor, who would be willing to accept the property and adhere to the covenants.

According to NSR, after the negotiations with TRBS ended, it promptly contacted RTC as an alternative trail sponsor, offering the property for interim trail use/rail banking. Petitioners state that they are willing to negotiate an interim trail use/rail banking agreement. RTC has provided a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of the right-of-way (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 all taxes assessed against the right-of-way.

It is not necessary to determine whether the notice of consummation deadline was December 27, 2000, or January 12, 2001, because under the facts described by petitioners, an extension of the deadline is warranted. It is clear that NSR had no intent to consummate the abandonment prior to satisfying the concerns of the SHPO, and there is no apparent public benefit in finding that the abandonment authorization has lapsed. The deadline for filing a notice of consummation will therefore be extended to the date of service of this decision to allow acceptance of the trail use request and statement of willingness and issuance of a NITU. Good cause exists to accept the late-filed trail use statement. Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way⁶ and the carrier is willing to enter into negotiations. Because NSR has not consummated the abandonment and is willing to negotiate for interim trail/rail banking use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an interim trail use/rail banking agreement during the 180-day period, commencing on January 12, 2001. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within the 180 days, NSR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for rail purposes.

⁵ Because that transaction would not have taken place under the Trails Act, a notice of consummation would have been required.

⁶ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

STB Docket No. AB-290 (Sub-No. 192X)

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. The deadline for the filing of a notice of consummation of the abandonment authorization in this proceeding is extended to the service date of this decision to allow acceptance of the trail use request and issuance of a NJTU in the present decision.
3. The decision served and published in the Federal Register on December 27, 1999, exempting the abandonment by NSR of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from January 12, 2001, or until July 11, 2001.
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 imposed on the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.
6. If the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by July 11, 2001, interim trail use may be implemented. If no agreement is reached by that date, NSR may fully abandon the line.
8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

32009
DO

SERVICE DATE - JULY 13, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: July 12, 2001

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001.

On July 9, 2001, RTC filed a motion to extend the negotiating period through January 10, 2002. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS and is close to reaching an agreement but that several issues relating to an agreement have yet to be resolved.

Where, as here, the carrier has not consummated the proposed abandonment and is willing to continue trail use negotiations, the negotiating period may be extended.¹ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through January 10, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ See Rail Abandonments--Supplemental Trails Act Procedures, 41 C.C.2d 152, 157-58 (1987).

STB Docket No. AB-290 (Sub-No. 192X)

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through January 10, 2002.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

32493
DO

SERVICE DATE - JANUARY 14, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: January 11, 2002

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL. at Lawrenceburg, and milepost 3.5-LL. at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001, but was extended through January 10, 2002, by decision served on July 13, 2001.

On January 10, 2002, RTC filed a further motion to extend the negotiating period through July 10, 2002. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS and is close to reaching an agreement but that several issues relating to an agreement have yet to be resolved.

Where, as here, the carrier has not consummated the proposed abandonment and is willing to continue trail use negotiations, the negotiating period may be extended.¹ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through July 10, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ See Rail Abandonments--Supplemental Trails Act Procedures, 41 C.C.2d 152, 157-58 (1987).

STB Docket No. AB-290 (Sub-No. 192X)

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through July 10, 2002.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

Case

Docket No.
AB 290 192 X

Title

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--IN ANDERSON AND WOODFORD COUNTIES, KY

Decision Summary

GRANTED RAILS TO TRAILS CONSERVANCY'S REQUEST TO EXTEND THE NITU NEGOTIATING PERIOD TO JANUARY 6, 2003.

Docket No.

Title

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SERVICE DATE - JULY 10, 2002

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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--

IN ANDERSON AND WOODFORD COUNTIES, KY

Exhibit I

Decided: July 9, 2002

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001, but subsequent decisions served on July 13, 2001, and January 14, 2002, extended the NITU negotiating period for RTC until July 10, 2002.

On July 8, 2002, RTC filed a further motion to extend the negotiating period through January 6, 2003. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS and is close to reaching an agreement but that several issues relating to an agreement have yet to be resolved.

Where, as here, the carrier has not consummated the proposed abandonment and is willing to continue trail use negotiations, the negotiating period may be extended.⁽¹⁾ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through January 6, 2003.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through January 6, 2003.

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

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

Vernon A. Williams

Secretary

1. See Rail Abandonments--Supplemental Trails Act Procedures, 41 C.C.2d 152, 157-58 (1987).

Case

Docket No.
AB 290 192 X

Title

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--IN ANDERSON AND WOODFORD COUNTIES, KY

Decision Summary

GRANTED RAILS TO TRAILS CONSERVANCY'S REQUEST TO EXTEND THE NITU NEGOTIATING PERIOD TO JULY 7, 2003.

Docket No.

Title

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Full Text of Decision

33315

SERVICE DATE - JANUARY 6, 2003

DO

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--

IN ANDERSON AND WOODFORD COUNTIES, KY


Exhibit F

Decided: January 3, 2003

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL at Lawrenceburg, and milepost 3.5-LL at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001, but subsequent decisions served on July 13, 2001, January 14, 2002, and July 10, 2002 extended the NITU negotiating period for RTC until January 6, 2003.

On December 27, 2002, RTC filed a further motion to extend the negotiating period through July 7, 2003. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS but that additional time is needed for RTC to reach an agreement with NS or to work with other potential cooperating entities for trail development and management.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended ⁽¹⁾ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through July 7, 2003.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through July 7, 2003.

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

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

Vernon A. Williams

Secretary

1. See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

33798
DO

SERVICE DATE – LATE RELEASE JULY 7, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: July 7, 2003

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL. at Lawrenceburg, and milepost 3.5-LL. at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001, but subsequent decisions served on July 13, 2001, January 14, 2002, July 10, 2002, and January 6, 2003 extended the NITU negotiating period for RTC until July 7, 2003.

On July 7, 2003, RTC filed a further motion to extend the negotiating period through January 4, 2004. Counsel for RTC has also submitted a letter from NS indicating that the carrier has not consummated the abandonment and that it consents to the requested extension. RTC states that it has been actively negotiating with NS but that additional time is needed for RTC to reach an agreement with NS or to work with other potential cooperating entities for trail development and management.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.¹ RTC has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through January 4, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

STB Docket No. AB-290 (Sub-No. 192X)

It is ordered:

1. RTC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through January 4, 2004.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9242

James R. Paschall
General Attorney

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December 26, 2003

via fax 202-331-9680

Andrea C. Ferster, General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W. 10th Fl.
Washington, D.C. 20036

Re: STB Docket No. AB-290 (Sub-No. 192X), Norfolk Southern Railway
Company--Abandonment Exemption--in Anderson and Woodford Counties, KY

Dear Ms. Ferster:

Norfolk Southern Railway Company (NSR) consents to the request of the Rails to Trails Conservancy to the Surface Transportation Board, for a 180-day extension of time for the Trail Use Negotiation Condition in this matter and to the substitution of The Tyrone Bridge and Rail Company as the party with which NSR will negotiate for transfer of the property under an interim trail use agreement. We authorize you to notify the STB of our consent. We are also faxing a copy of this letter to Secretary Williams.

NSR has not consummated the abandonment of the line that is the subject of this proceeding and has continued to negotiate with the Rails to Trails Conservancy on an agreement to transfer the line for interim trail use.

Very truly yours,

James R. Paschall

cc: Mr. John T. Moon

cc via fax: 202-565-9002
Honorable Vernon A. Williams, Secretary
Surface Transportation Board