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SERVICE DATE – JANUARY 26, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1302X

CITY OF TEMPLE, TEX.—ABANDONMENT EXEMPTION—
IN BELL COUNTY, TEX.

Decided: January 25, 2021

The City of Temple, Tex. (the City), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments for the City to abandon approximately 6.277 miles of rail line between Belton, Tex., milepost 0.0, and Smith, Tex., milepost 6.277, in Bell County, Tex. (the Line)¹. Notice of the exemption was served and published in the Federal Register on December 28, 2020 (85 Fed. Reg. 84,451). The exemption is scheduled to become effective on January 27, 2021.

The City filed a request for issuance of a notice of interim trail use or abandonment (NITU) on December 28, 2020, to establish interim trail use/rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d).

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on January 4, 2021, recommending that five conditions be imposed on any decision granting abandonment authority. First, OEA stated in the Draft EA that the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ) commented that a Section 404 permit from the U.S. Army Corps of Engineers (Fort Worth District) (the Corps) may be required, but that OEA had not, to date, received comment the Corps. Accordingly, OEA recommended that any decision granting abandonment authority be conditioned to include consultation with the Corps to confirm whether permitting is necessary.

Second, OEA stated that TCEQ also noted that permitting under Section 402 of the Clean Water Act may be required if certain conditions are met. Accordingly, OEA recommended that a condition requiring the City to consult with TCEQ to determine whether Section 402 permitting is necessary.

Third, OEA noted that the Oklahoma Field Office of the Department of Interior's Bureau of Land Management (BLM) noted that the project lies within the migration route of a candidate

¹ In the same jointly filed notice, Temple & Central Texas Railway, LLC, sought to discontinue service over the Line. See Temple & Cent. Tex. Ry.—Discontinuance of Serv. Exemption—in Bell Cnty., Tex., AB 1309X (STB served Dec. 28, 2020).

species for listing by U.S. Fish and Wildlife Service, the monarch butterfly. Consequently, BLM recommended that any reclamation efforts involving planting include planting of vegetation that would aid the reproduction and further proliferation of the monarch butterfly. Accordingly, OEA recommended a condition that, should the City conduct any planting associated with abandonment-related salvage activities, it consult with BLM to ensure that the planting selected would aid proliferation of the monarch butterfly.

Fourth, OEA stated that the City's environmental and historic report includes a rehabilitation feasibility report by Sparks Engineering regarding the necessary conditions and steps to be taken to preserve the Missouri, Kansas, and Texas (MKT) Railroad Bridge over the Leon River, a property listed in the National Register of Historic Places, and allow for the City's contemplated pedestrian and trails use following salvage of the Line. The City served the environmental and historic report on the Texas Historical Commission (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). The SHPO commented that that there would be no adverse effects on historic properties if the conditions and rehabilitation feasibility report for the historic bridge included in the City's submission is used to plan rehabilitation and reuse of the bridge for pedestrian and/or bicycle recreation. Accordingly, OEA recommended a condition requiring the City to comply with the rehabilitation feasibility report by Sparks Engineering regarding measures to be taken to preserve the MKT Railroad Bridge.

Fifth, OEA stated that the SHPO's archaeological comments² note that no identified historic properties, archeological sites, or other cultural resources are present or affected, but that, if cultural materials are encountered during project activities, that work should cease in the immediate area (though it may continue where no cultural materials are present) and the City should contact the Texas Historical Commission's Archeology Division to consult on further actions that may be necessary to protect the cultural remains. Accordingly, OEA recommended a condition requiring that the City cease work near any such discovery and notify OEA, the SHPO, and any interested federally recognized Tribes to determine appropriate protective measures and next steps regarding culturally significant findings.

OEA issued its Final Environmental Assessment (Final EA) on January 22, 2021, indicating that one new comment was received from the National Geodetic Survey (NGS), which indicated that there may be geodetic survey markers in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring the City to notify NGS at least 90 days prior to beginning abandonment-related salvage activities. OEA also continues to recommend that the five conditions previously recommended in the Draft EA be imposed.

² The SHPO addressed above-ground resources, which include the MKT Railroad Bridge, separately.

Accordingly, based on OEA's recommendation, the six conditions proposed in the Final EA will be imposed.

Interim Trail Use. The City's request complies with the requirements of 49 C.F.R. § 1152.29, and, therefore, a NITU will be issued.³ Here, because the City is both the owner of the Line and the trail sponsor, the negotiations that normally take place to reach a trail use agreement as contemplated under 49 C.F.R. § 1152.29 may not be needed. However, to fulfill the purpose of "ensur[ing] that the agency and the public have accurate information on the status of property where a [NITU] has been issued," Nat'l Trails Sys. Act & R.R. Rts.-of-Way, EP 702, slip op. at 9 (STB served Feb. 16, 2011), the City will be required, prior to the expiration of the NITU period prescribed below, to file with the Board a notice confirming that it is implementing interim trail use/rail banking on the Line (or a portion thereof) and including all the other information otherwise required under 49 C.F.R. § 1152.29(h). If the City does not implement interim trail use/rail banking within one year, the City may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, 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 December 28, 2020, exempting the abandonment of the Line described above is modified to the extent necessary to permit the issuance of a NITU to the City to implement interim trail use/rail banking as set forth below. The abandonment is also subject to the following conditions:⁴

³ A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. City of Yelm—Aban. Exemption—in Thurston & Pierce Cntys., Wash., AB 1295X, slip op. at 2 n.3 (STB served July 9, 2020); Boot Hill & W. Ry.—Aban. Exemption—in Ford Cnty., Kan., AB 927X, slip op. at 1 n.1 (STB served Feb. 13, 2006); Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle & Pitkin Cntys., Colo., AB 547X, slip op. at 4 & n.11 (STB served Oct. 16, 1998); see also City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al. (STB served Dec. 21, 2018) (issuing NITUs to trail sponsors who were three joint owners of the subject line).

⁴ If the City implements trail use on the Line (or a portion thereof) under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, compliance with these conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

(a) Prior to commencement of any abandonment-related salvage activities, the City shall consult with the Corps and, if applicable, shall comply with its reasonable requirements.

(b) The City shall, prior to commencement of any abandonment-related salvage activities, consult with TCEQ regarding its stormwater requirements and shall comply with its reasonable requirements.

(c) Should the City conduct any planting associated with abandonment-related salvage activities, it shall consult with BLM.

(d) The City shall comply with the rehabilitation feasibility report by Sparks Engineering regarding measures to be taken to preserve the MKT Railroad Bridge over the Leon River.

(e) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the City's abandonment-related salvage activities, the City will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federally recognized tribes, the City, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

(f) The City shall notify the NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.

3. If the City implements interim trail use/rail banking, it must assume, for the term of the trail use, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the City's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If the City implements trail use, the City shall notify the Board within 10 days that it has done so. See 49 C.F.R. § 1152.29(d)(2), (h).

6. If interim trail use is implemented, and subsequently the City intends to terminate trail use on all or any portion of the right-of-way that is designated for 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 the City files the notice described above by January 26, 2022, interim trail use may be implemented. If it does not, the City may fully abandon the Line, subject to any outstanding conditions.

8. This decision and notice is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.