

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 414 (Sub-No. 8X)

IOWA INTERSTATE RAILROAD, LTD.—ABANDONMENT
EXEMPTION—IN POLK, JASPER, AND MARION COUNTIES, IOWA

Decided: September 21, 2015

Iowa Interstate Railroad, Ltd. (IAIS), filed a petition for exemption under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 10.75 miles of rail line between milepost 145.75 south of Mitchellville and the current end of the track at milepost 135.0 southeast of Prairie City, in Polk and Jasper Counties, Iowa (the Prairie City segment). Notice of the exemption was served and published in the Federal Register on May 22, 2014 (79 Fed. Reg. 29,503). By decision served August 18, 2014, the Board granted IAIS's petition.¹

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on July 1, 2014. In the EA, OEA stated that the Iowa Department of Natural Resources (IDNR) recommended that best management practices be used during salvage operations and stated that its Conservation and Recreation Division noted that approvals from other IDNR offices, such as the Environmental Services Division, may be required prior to salvage operations. OEA therefore recommended that a condition be imposed requiring IAIS to consult with IDNR prior to conducting salvage operations to determine what, if any, approvals or permits are needed to: (1) protect any rare species or significant natural communities and streams and other flowing water bodies, and (2) provide best management practices, and if approvals or permits were needed, OEA recommended that IAIS be required to comply with the reasonable requirements of IDNR. OEA also stated that the National Geodetic Survey (NGS) identified approximately six geodetic station markers that may be affected by the proposed abandonment. OEA recommended that IAIS be required to notify NGS at least 90

¹ In the August 18, 2014 decision, IAIS was also authorized to abandon two contiguous line segments: (1) between milepost 135.0 near Prairie City and milepost 123.50 near Otley, a distance of approximately 11.5 miles in Jasper and Marion Counties, Iowa; and (2) between milepost 123.50 near Otley and milepost 114.80 in Pella, a distance of approximately 8.7 miles in Marion County, Iowa. By letter filed on September 23, 2015, IAIS provided notice that these segments were consummated as of September 17, 2014. The notice of interim trail use here deals only with the Prairie City segment.

days before beginning salvage operations that would disturb or destroy these geodetic station markers. Accordingly, the conditions were imposed in a decision served August 18, 2014.²

On August 12, 2015, the Jasper and Polk County Conservation Boards, the Cities of Prairie City and Mitchellville, and the Iowa Natural Heritage Foundation (collectively, proponent), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, to provide time to negotiate with IAIS for acquisition of the right-of-way for use as a recreational trail and for rail banking. Proponent submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service, as required by 49 C.F.R. § 1152.29. On August 13, 2015, IAIS agreed to negotiate with proponent for interim trail use.

Because the proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and IAIS is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, IAIS may fully abandon the line, subject to any outstanding conditions in this proceeding. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As conditioned, 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 decision served on August 18, 2014, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit proponent to negotiate with IAIS for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until March 20, 2016.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, 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

² OEA, in the EA, had also recommended that a historic preservation condition under § 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, be imposed. However, OEA in the final EA, dated August 5, 2014, concluded that the imposition of a historic preservation condition was no longer required. The consultation conditions prior to salvage activities imposed in the August 18, 2014 decision remain in effect.

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 trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by March 20, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, IAIS may fully abandon the line, subject to any outstanding conditions in this proceeding.

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

By the Board, Rachel D. Campbell, Director, Office of Proceedings.