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SERVICE DATE - NOVEMBER 20, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-414 (Sub-No. 3X)

IOWA INTERSTATE RAILROAD, LTD.--ABANDONMENT EXEMPTION--  
IN MARION AND JASPER COUNTIES, IA

Decided: November 17, 2000

Iowa Interstate Railroad, Ltd. (IAIS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances to abandon a 13.36-mile line of railroad between milepost 123.50 near Otley and milepost 136.86 near Prairie City, in Marion and Jasper Counties, IA. Notice of the exemption was served and published in the Federal Register on October 20, 2000 (65 FR 63116). The exemption is scheduled to become effective on November 21, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 27, 2000. In the EA, SEA indicates that the right-of-way may be suitable for public use following abandonment. The Jasper and Marion County Conservation Boards<sup>1</sup> and the Iowa Natural Heritage Foundation (Commenter), and the Iowa Trails Council (ITC) each filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for use as a recreational trail. Commenter also requests the imposition of a public use condition under 49 U.S.C. 10905. Commenter states that the corridor would make an excellent transportation and recreation trail. In addition, Commenter indicates that acquisition of the corridor for public use could provide important wildlife habitat and greenspace. In its filing, ITC states that it is representing the interest of Commenter (collectively ITC/Commenter).<sup>2</sup> ITC/Commenter request that IAIS be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms. ITC/Commenter requests that IAIS be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels for a 180-day period from the effective date of the abandonment exemption. ITC/Commenter states that the time period is needed to complete

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<sup>1</sup> On October 23, 2000 and October 24, 2000, Jasper and Marion County Conservation Boards, respectively, filed letters stating that they are government agencies authorized to acquire, develop, maintain and make available to the inhabitants of the county, public parks, preserves, recreation, conservation and wildlife areas. The parties also state that they are in partnership with the Iowa Natural Heritage Foundation.

<sup>2</sup> On September 26, 2000, ITC submitted a letter from the Jasper County Conservation Board supporting its statement.

negotiations with IAIS. ITC/Commenter submitted statements of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and they have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile received on November 15, 2000, IAIS indicated its willingness to negotiate with ITC/Commenter for interim trail use.

Because ITC/Commenter's requests comply with the requirements of 49 CFR 1152.29 and IAIS is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable agreement, no further Board action is necessary. If no agreement is reached within 180 days, IAIS 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 railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way as Trails, 2. I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Commenter has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, IAIS must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, IAIS is not required to deal exclusively with Commenter, but may engage in negotiations with other interested persons.

As conditioned, this decision 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 of exemption served and published in the Federal Register on October 20, 2000, 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, subject to the conditions that IAIS keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days from the November 21, 2000 effective date (until May 21, 2001), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
3. 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 that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by May 21, 2001, interim trail use may be implemented. If no agreement is reached by that time, IAIS may fully abandon the line.
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary