

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 295 (Sub-No. 7X)

THE INDIANA RAIL ROAD COMPANY—ABANDONMENT EXEMPTION—  
IN MARTIN AND LAWRENCE COUNTIES, IND.

Decided: September 16, 2011

This decision extends the interim trail use negotiating period for the portion of the line between milepost 241.35 and milepost 262.11.

By decision and notice of interim trail use or abandonment (NITU) served on March 26, 2010 (March 2010 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903, the abandonment by The Indiana Rail Road Company (INRD) of 22.80 miles of rail line in Martin and Lawrence Counties, Ind. The line is comprised of a 21.15-mile line of railroad extending from milepost 241.35 east of Crane, Ind., to milepost 262.50 in Bedford, Ind. (Crane-Bedford Line), and a track extending from the Crane-Bedford Line at approximately milepost 262.40 and proceeding in an open counter-clockwise loop (east-north-west-south) for approximately 1.65 miles (Bedford Industrial Track). The exemption was subject to public use, historic preservation, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for either the Indiana Trails Fund, Inc. (ITF), or the Greenways Foundation, joined by the City of Bedford, Ind. (Greenways/Bedford), or both, to negotiate an interim trail use/rail banking agreement with INRD for the right-of-way involved in this proceeding. The period for INRD and ITF to negotiate an interim trail use/rail banking agreement under the NITU has been extended twice, most recently (by decision served March 18, 2011) to September 17, 2011.<sup>1</sup>

By decision served on August 22, 2011, the proceeding was reopened and the NITU served on March 26, 2010, was modified to remove from its scope the Bedford Industrial Track and the 0.39-mile portion of the line between milepost 262.11 and milepost 262.50. The August 22, 2011 decision also authorized INRD to consummate the abandonment for that portion of the line, extending between milepost 262.11 and milepost 262.50 within 60 days from the service date of August 22, 2011, or the authority will automatically expire.<sup>2</sup> See 49 C.F.R.

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<sup>1</sup> The extension to September 17, 2011, was sought by INRD and ITF; Greenways/Bedford did not seek that extension, nor does it seek one here.

<sup>2</sup> The public use condition expired on October 22, 2010, and may not be renewed; the historic preservation condition was removed by decision served June 29, 2010; and the remaining environmental conditions are not barriers to consummation.

§ 1152.29(e)(2). The parties have agreed that a trail use agreement will cover only that portion of the line between milepost 241.35 and milepost 262.11.

On September 2, 2011, INRD filed a request to extend the NITU negotiating period until March 12, 2012. INRD states that the parties have reached an agreement, but the parties are still negotiating the terms of the trail use/rail agreement. By letter filed on September 7, 2011, ITF states that it concurs with INRD's extension request.

On September 13, 2011, Everett and June Patrick (landowners), landowners adjacent to the INRD rail bed, filed a protest requesting that the Board deny INRD's request for another extension of the NITU negotiating period. The landowners state that their land is not suitable for public use. An attachment to that filing included a list of landowners who also oppose the requested extension. The landowners' request will be denied. Under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), the trail use program is voluntary and consensual between the railroad and the trail user. Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Further, the Board's role under the Trails Act is limited and largely ministerial. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001).

Where, as here, the carrier is willing to continue trail use negotiations for the portion of the line between milepost 241.35 and milepost 262.11, the negotiating period may be extended.<sup>3</sup> Because an extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, the requested extension will be granted. Accordingly, the NITU negotiation period will be extended for the portion of the line between milepost 241.35 and milepost 262.11 until March 12, 2012.

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

It is ordered:

1. Everett and June Patrick's request to deny the extension of the NITU negotiating period is denied.
2. INRD's request to extend the NITU negotiating period is granted.
3. The period for INRD and ITF to negotiate an interim trail use/railbanking agreement under the NITU is extended to March 12, 2012, for that portion of the line between milepost 241.35 and milepost 262.11.

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<sup>3</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

4. This decision is effective on its service date.

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