

40464
SEA

SERVICE DATE – FEBRUARY 4, 2010

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

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

**The Indiana Rail Road Company – Abandonment Exemption –
in Martin and Lawrence Counties, IN**

BACKGROUND

In this proceeding, the Indiana Rail Road Company (INRD) has filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 seeking to abandon a section of its north-south line between Chicago, IL, and Louisville, KY, between milepost 241.35 near Crane, IN, and milepost 262.50 near Bedford, IN. The proposed abandonment also includes the Bedford Industrial Track which branches from the main line at approximately milepost 262.4 and proceeds in a loop of approximately 1.65 miles between Bedford Industrial Track milepost 0.00 at the switch connection to the main line and milepost 1.65. The total length of the proposed abandonment is a distance of 22.8 miles in Martin and Lawrence Counties, IN (Line).

If the Surface Transportation Board (Board) should approve this abandonment, INRD intends to remove the rails, ties, and other track materials, possibly including ballast, and to reuse the materials on other parts of its rail system. Moreover, INRD states that following inspection, ties that are not suitable for reuse would be removed from the right-of-way and disposed of in an environmentally acceptable manner. INRD also states that it does not intend to remove any of the 34 bridges or the single tunnel. Instead, all would be barricaded to prevent access.

According to INRD, the Line does not contain any Federally granted rights-of-way and traverses U.S. Postal Service Zip Codes 47581, 47470, and 47421. A map depicting the proposed abandonment in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

INRD has submitted an environmental report that concludes that neither the proposed abandonment nor post-abandonment activities, such as salvage and disposition of the right-of-way, would significantly affect the quality of the human environment. INRD served the environmental report on a number of appropriate Federal, state, and local agencies as required by

the Board's environmental rules [49 CFR 1105.7(b)].¹ The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

INRD states that three shippers located on the Line have received rail service since December, 31, 2006. All three shippers are located in Bedford, IN. Because the names of these shippers have been filed under protective seal, they are referred to as "Shippers A, B, and C." According to INRD, the following rail traffic was moved: in 2007, Shipper A received 9 carloads of scrap metal and Shipper B received 2 carloads of steel beams; in 2008, Shipper A received 21 carloads of scrap metal while Shipper C moved 1 outbound carload of heavy equipment; and in 2009, Shipper A received 25 carloads of scrap metal. INDR also notes that it moved the following volumes of overhead rail traffic: 5,842 carloads in 2007; 4,663 carloads in 2008; and 1,754 carload through July 19, 2009. Since July 19, 2009, INRD has rerouted most of the overhead traffic through Indianapolis, IN, via a haulage agreement with Louisville & Indiana Railroad Company. INDR has rerouted the rest of the overhead traffic via CSX through Indianapolis, IN, via CN through Newton, IL, or via NS through Chicago, IL.

INRD discusses two alternatives to the proposed abandonment of the Line. First, INRD could continue operating the Line to serve the very small amount of on-line traffic at Bedford, IN, and return overhead traffic. INRD believes that this alternative would be the most costly as it would have to continue to maintain the Line and also increase INRD's costs of handling the overhead traffic because the new routings for overhead traffic are more efficient. Second, INRD could continue operating the Line to serve solely the on-line traffic at Bedford, IN. This would require INRD to incur substantial annual maintenance costs even if it performed no capital work. Under this alternative, the Line would deteriorate to a minimally usable condition adequate only to serve the limited on-line rail traffic generated at Bedford, IN.

According to INRD, the proposed abandonment would have minimal impact on regional and local roadways systems and patterns. INRD states that all of the overhead traffic, between 4,000 and 5,000 carloads per year has been diverted to more efficient routings and would not be returned to the Line even if the abandonment is not approved. In addition, the principal shipper, Shipper A located in Bedford, IN, has only received a total of 55 carloads of scrap metal since the beginning of 2007. According to the Applicant, it has offered to assist Shipper A in relocating its facility to another point on INRD's system or to install a transload arrangement either on INRD's own line or on CSXT's line located at Mitchell, IN. In the event that Shipper A finds neither of these offers satisfactory, Shipper A would likely receive inbound scrap metal

¹ The railroad's environmental and historic reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB-295 (Sub-No. 7X).

via truck which would result in an increase of approximately 40 trucks per year (less than one truck per week) based on an average of approximately 20 rail cars per year.

INRD states that the proposed abandonment would result in a minimal effect on recyclable commodities. Shipper A received scrap metal for processing. If the Board should approve abandonment of the Line, scrap metal shipped to Shipper A would be transported to an intermodal facility located at Mitchell, IN, or would be sent to Shipper A by truck.

INDR states that it is investigating the quality of its title to the right-of-way and will decide how to dispose of it once it has concluded its investigation. The Line runs through a rolling countryside and for a substantial distance through the Crane Naval Weapons Support Center and the Hoosier National Forest. The Line may be suitable for use as a trail, although the portion that passes through the Crane Naval Weapons Support Center may not be suitable for trails use because of security concerns.

In petitions submitted by residents of both Lawrence and Martin Counties, state that they are property owners who own fee simple title to the property within the right-of-way and are opposed to trails use.

In a letter dated December 23, 2009, the Indiana Trails Fund, Inc., requests issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

In a letter dated December 31, 2009, the City of Bedford, IN, and the Greenways Foundation, Inc., requests issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

Salvage Activities

If the Board should approve this abandonment, INRD intends to remove the rails, ties, and other track materials, possibly including ballast, and to reuse the materials on other parts of its rail system. INRD further states that following inspection, ties that are not suitable for reuse would be removed from the right-of-way and disposed of in an environmentally acceptable manner. INRD does not intend to remove any of the 34 bridges or the single tunnel. Instead, the bridges and tunnel would be barricaded to prevent access. INRD intends to conduct salvage activities along the Line itself to minimize disturbance to the roadbed and the area adjacent to the right-of-way.

In a letter dated October 22, 2009, the U.S. Department of Interior, Fish and Wildlife Service (FWS) recommends the following measures to avoid or minimize impacts to wildlife and their habitats: 1) Minimize tree clearing and avoid wetland disturbance for access to work areas; 2) Avoid discharge of demolition debris, waste material, or other pollutants into streams or wetlands; 3) If earthmoving is required, contain disturbed soil to prevent runoff to waterways or

wetlands, and 4) If bridge removal is proposed, minimize disturbance of the stream channel and banks, and avoid work in stream channels during primary fish spawning season (April 1 – June 15). The FWS further notes that this precludes the need for further consultation as required under Section 7 of the Endangered Species Act of 1973, as amended.

The FWS also notes the existence of karst limestone formations in the area and their importance to the local ecology. The FWS recommends the following measures to identify and minimize adverse impacts to karst systems: 1) Conduct a survey to evaluate the presence of karst features. The study must be conducted by a person with a background in karst geology and should include dye traces if deemed necessary, 2) If spring occur in areas of proposed surface disturbance, maintain a protective buffer of at least 25 feet wide around each spring and preserve existing flow patterns, 3) maintain a buffer of undisturbed vegetation at least 25 feet wide around the highest contour of all sinkholes which contribute to karst drainage ways, 4) maintain approximately the existing volume of water drainage to affected sinkholes. If this is not possible, studies should be conducted to determine the general groundwater/drainage patterns of the immediate area and the approximate drainage volume of the entire system should be maintained, and 5) avoid routing of drainage containing construction site sediment, highway ditch effluent, or other pollutants directly into sinkholes. If routing of polluted drainage to sinkholes is unavoidable, it must first be treated by filters or other devices for removal of pollutants.

INRD states that it does not believe that salvage of the rail, ties, other track materials, or ballast from the right-of-way would have any effect on karst systems.

The FWS states that the proposed abandonment is within the range of the Federally endangered Indiana bat (*Myotis sodalis*). The FWS notes that there is suitable habitat for this species present in many areas along the project corridor and there are recent summer records of Indiana bats at the Crane Naval Weapons Support Center. The FWS notes that the proposed project would not eliminate enough habitat to affect the species, but to avoid incidental take from removal of an occupied roost tree, it recommends that tree clearing be avoided during the period between April 1 – September 30. If this measure is implemented, the FWS states that the proposed abandonment would not likely result in adverse impacts to the Indiana bat.

In response to FWS's concerns regarding the Indiana bat, INRD explains that the salvage activities it plans along the Line should not necessitate the removal of any trees. If circumstances change and trees do need to be cleared, INRD has committed to clear trees in accordance with FWS's recommendations.

In a second letter dated October 9, 2009, also from the FWS, it states that it has no concerns regarding real estate matters related to the proposed abandonment.

Due to the variety of concerns raised by the FWS, SEA will recommend that the Board impose a condition requiring INRD to consult with the FWS, Bloomington Field Office, prior to the commencement of any salvage activities to ensure that INRD complies with FWS's recommendations.

Regarding potential impacts of the proposed abandonment to land use, INRD has reviewed the recently adopted comprehensive land use plans of both Martin and Lawrence Counties and believes that the abandonment, as proposed, is consistent with each plan.

In a letter dated October 6, 2009, the Natural Resources Conservation Service states that the proposed abandonment would not cause the conversion of prime farmland.

According to INRD, none of the on-line shippers either receives or ships hazardous materials. Furthermore, to the extent that hazardous materials were transported via overhead service, they have been rerouted to more efficient rail lines unrelated to the proposed abandonment. Moreover, INRD states that it is unaware of any hazardous wastes sites or sites where there have been known hazardous materials spills within the right-of-way.

INRD states that a substantial portion of the Line passes through the Hoosier National Forest. INRD believes that abandonment of the Line would remove external disturbances and permit use of the right-of-way that is more consistent with the National Forest.

According to INRD, permits under Section 404 and 402 of the Clean Water Act are not required because the salvage activities planned by INRD would not result in fill materials being deposited in any wetland or water body. Additionally, the abandonment, as proposed, would not result in the removal any of the bridges located on the Line.

SEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

In an e-mail dated August 21, 2009, the U.S. Department of Commerce, National Geodetic Survey (NGS) identified three geodetic survey markers that may be disturbed by the proposed abandonment. Therefore, SEA will recommend that INRD consult with the NGS prior to the commencement of any salvage activities.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts.

HISTORIC REVIEW

In its Historic Report, INRD states that the right-of-way is generally 100 feet wide and passes through areas that are primarily wooded until the Line enters the town of Bedford, IN, whereupon the surroundings becomes urban. The Line connects to CSXT's Hoosier Subdivision at milepost 262.5.

According to a variety of historical sources, the Line was developed by John R. Walsh, an Irish immigrant from Chicago who made his wealth in the news business and banking industry. Mr. Walsh formed the Western News Company with Andrew McNally and either owned, or had controlling interest in three Chicago banks: Chicago National Bank; Equitable Trust Company; and the Home Savings Bank.

In 1897, Mr. Walsh bought the Evansville and Richmond Railroad, which was under foreclosure and renamed it the Southern Indiana Railroad (SIR). At the time, the rail line ran from Elnora, IN, to Westport, IN. By 1900, the rail line reached to Terre Haute, IN, and by 1905 to the Indiana and Illinois State Line. Mr. Walsh continued to extend the rail line to Chicago, IL via the Chicago Southern Railway, which he also owned.

Mr. Walsh's limestone and sandstone quarries, located in IN and OH were some of the largest in the world. In fact, the Walsh Quarry, purchased from the Bedford Quarries Company in 1895, is reported to be the largest building limestone quarry in the world. In 1898, Mr. Walsh constructed the 12 mile long Bedford Belt Railways, providing service to the Walsh Quarry, and leased it to SIR. Limestone mined from this quarry was moved over the Bedford Belt Railway where it connected to his other rail lines. The stone, from this and other IN limestone quarries has been used in the construction numerous projects including the Empire State Building, Pentagon, National Cathedral, Washington Monument and countless other private and public works.

Mr. Walsh's empire began to crumble when by 1905, the three Chicago banks began to fail. Mr. Walsh was ultimately charged with 180 counts of misapplication of bank funds. It was determined that Mr. Walsh made large loans to a variety of concerns with which he was identified as either owning or controlling, including three railroads, three gas companies, a newspaper, a stone quarry, and a coal company. On January 18, 1908, he was convicted on 54 counts and sentenced to five years at Leavenworth Penitentiary. Shortly thereafter, the railroads owned by John Walsh fell into receivership and in 1910 the railroads were acquired by the Chicago, Milwaukee & St. Paul Railroad.

According to INRD, there are 34 bridges and one tunnel on the Line, all of which are 50 years old or older. INRD states that it has documents within its possession relating to each of the structures. INRD states that it does not believe that any of the structures meet the criteria for listing on the National Register of Historic Places. INRD maintains that it is not aware of the likelihood of any archaeological resources and even if any did exist, none would be disturbed as

a result of salvage activities. INRD also notes that the former Milwaukee Rail Station in Bedford, IN, is more than 50 years old. The Rail Station is not now (and according to INRD, has never been) owned by INRD and has been acquired by persons interested in its preservation.

As stated above, INRD states that it does not intend to remove any of the 34 bridges or destroy the single tunnel. Instead, the bridges and tunnel would be barricaded to prevent access.

INRD intends to conduct salvage activities from the Line itself to minimize disturbance to the roadbed and of the area adjacent to the right-of-way.

INRD has submitted the historic report to the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (the Indiana agency that acts as the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c).² In a letter dated December 18, 2009, the SHPO notes the following may fall within the probably Area of Potential Effect (AoPE) and may be eligible for inclusion in the National Register of Historic Places: 1) Furst-Kerber Cut Stone Co, 2) Williams Milling Company, 3) Lawrence County Bridge No. 126, 4) Bedford Foundry & Machine Co., 5) Indiana Limestone Company Office, 6) Monon Railroad Depot, 7) Archaeological Site 12Lr275, 8) Archaeological Site 12Lr457, and 9) Archaeological Site 12Mn693. Furthermore, the SHPO asks for the following additional information:

- Provide photographs of the above identified structures, excluding Archaeological Sites 12Lr275 and 12Lr457, from the railroad right-of-way with a description of the work to be performed within the vicinity of said structures.
- Will brick pavers in the vicinity of the Milwaukee Railroad Depot be disturbed, in any way?
- Provide a description of any access routes and staging areas and their locations,
- If ballast is to be removed, will disturbance be limited to areas of modern disturbance?
- Will the rails, ties and other track materials or any part of the tunnel be removed?
- Because the proposed project is in an area associated with the historic limestone industry, the SHPO recommends that a detailed historic documentation be prepared to assist in its review of the potential to impact historic resources.

² Guidance regarding the Board's historic preservation review process is available on the Board's web site at <http://www.stb.dot.gov/stb/environment/preservation.html>.

In response to SHPO's requests, SEA will recommend a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

Pursuant to 36 CFR 800.2, SEA conducted a search of the Native American Consultation Database at <http://home.nps.gov/nacd> to identify Federally recognized tribes, which may have ancestral connections to the project area. The database indicated that the following two Federally recognized tribe that may have ancestral connection to the project area: Miami Tribe of Oklahoma and Peoria Tribe of Indians of Oklahoma. SEA will ensure that the tribes receive a copy of this EA for its review and that these two tribes be added to the service list for this proceeding.

In a letter dated October 7, 2009, the Peoria Tribe of Indians of Oklahoma states that it has no objections to the proposed project. However, the Tribe notes that if any human skeletal remains and/or other objects falling under the Native American Graves Protection and Repatriation Act (NAGPRA) are uncovered, that all activities cease immediately and that appropriate persons, including state and tribal NAGPRA representatives be contacted. Therefore, we recommend that if during the course of salvage activities any traditional cultural properties, sacred sites, burials or other national register eligible properties are inadvertently discovered, we recommend that INRD shall abide by the specific provisions for such events as outlined in the Section 106 regulations at 36 CFR 800.13(b) of the National Historic Preservation Act.

Based on the information available to date, SEA does not believe that salvage activities would cause significant impacts to historic or cultural resources. SEA is providing a copy of this EA to the following agencies for review and comment: Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology, Martin County Historical Society, Lawrence County Historical & Genealogical Society, and the Lawrence County Railroad Historical Society.

CONDITIONS

SEA recommends that the following conditions be imposed on any decision granting abandonment authority.

- 1. The Indiana Rail Road Company, shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f,**

has been completed. The Indiana Rail Road Company shall report back to the Section of Environmental Analysis (SEA) regarding any consultations with the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology and the public. The Indiana Rail Road Company may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

- 2. The Indiana Rail Road Company shall consult with the National Geodetic Survey at least 90 days prior to the beginning of salvage activities that will disturb or destroy any of the three geodetic station markers.**
- 3. The Indiana Rail Road Company shall consult with the U.S. Fish and Wildlife Service, Bloomington Field Office, prior to the commencement of any salvage activities to ensure that any reasonable concerns are addressed.**
- 4. In the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during the Indiana Rail Road Company's (INRD) salvage activities, INRD will immediately cease all work and notify the Section of Environmental Analysis (SEA), interested Federally recognized tribes, and the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, INRD, and any other consulting parties, if any, to determine whether any mitigation measures are necessary.**

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of the line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

In a letter dated December 23, 2009, the Indiana Trails Fund, Inc., requests issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

In a letter dated December 31, 2009, the City of Bedford, IN and the Greenways Foundation, Inc., are requesting issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

INDR states that it is investigating the quality of its title to the right-of-way and will decide how to dispose of it once it has concluded its investigation. The Line runs through a rolling countryside and for a substantial distance through the Crane Naval Weapons Support Center and the Hoosier National Forest. The Line may be suitable for use as a trail, although the portion that passes through the Crane Naval Weapons Support Center may not be suitable for trails use because of security concerns.

In a letter received December 22, 2009, signed by 21 residents of Martin County, states that they are property owners who own fee simple title to the property within the right-of-way and are opposed to trails use.

In a letter dated December 23, 2009, the Indiana Trails Fund, Inc., requests issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

In a letter received December 28, 2009, signed by 81 residents of Lawrence County, states that they are property owners who own fee simple title to the property within the right-of-way and are opposed to trails use.

In a letter dated December 31, 2009, the City of Bedford, IN, and the Greenways Foundation, Inc., requests issuance of a Public Use condition as well as a Certificate of Notice of Interim Trail Use.

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPAGAC directly at 202-245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-295 Sub No. 7X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: February 4, 2010.

Comment due date: March 8, 2010.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Attachment