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OEA

SERVICE DATE – OCTOBER 12, 2012

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-1102X

**Indiana Northeastern Railroad Company — Abandonment Exemption—
in Branch and St. Joseph Counties, Mich.**

BACKGROUND

On September 19, 2012, the Indiana Northeastern Railroad Company (IN) filed with the Surface Transportation Board (Board) a notice under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon 19.37 miles of rail line located in Branch and St. Joseph Counties, Michigan (Line). The Line begins at milepost 81.32, near Coldwater, in Branch County and extends to milepost 100.69, near Sturgis, St. Joseph County, all within Michigan. A map depicting the Line in relationship to the area served is attached to this Environmental Assessment (EA).

According to IN, no rail traffic has moved over the Line in more than two years, and there is no reasonable possibility for development of new rail traffic. IN states there is no reasonable alternative to the proposed abandonment other than retention of the Line in its current unused state.

IN states that following abandonment, the Line may be suitable for other public purposes, such as a recreational trail. IN opines that state or local entities may be interested in converting the Line to a recreational trail.

If the abandonment is approved, IN intends to salvage the rail, ties and track materials. IN explains that it would access the rail line to conduct salvage by using existing access points and would salvage only disturb the top layer of the railbed. The railbed, subgrades and all structures, culverts and related items would remain in place and not be disturbed.

DESCRIPTION OF THE RAIL LINE

The rail line begins on the northwest side of Sturgis and passes through the rural farm communities of Sturgis, Village of Burr Oak, Bronson, and Batavia before ending near U.S. Interstate 69 on the south side of Coldwater. The Line passes through a mixture of residential, light commercial and farm land areas. The width of the right-of-way is typically 100 feet wide and traverses United States Postal Service Zip Codes 49036, 49028, 49030, and 49091.

According to IN, the Line does not contain any federally granted rights-of-way. IN believes, however, that the Line may be subject to some reversionary interests that could affect the transfer of title or use of the property for other than rail purposes. IN also notes that the Line contains five bridge structures that are 50 years old or older, all of which would remain in place and would not be salvaged.

ENVIRONMENTAL REVIEW

IN submitted an Environmental Report that concludes that the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. IN served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules (49 C.F.R. § 1105.7(b)).¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

The Line has been out of service for more than two years. Consequently, no rail-to-truck diversions would occur. Therefore, OEA believes that there would be no impact on existing regional or local transportation systems or patterns. Further, there would be no effect on the movement and/or recovery of energy resources, recyclable commodities or change in overall energy efficiency.

IN also states that alternative rail service would continue to be available from its side tracks in Coldwater, MI.

Salvage Activities

As stated earlier, if the abandonment is approved, IN would salvage the rail, ties and track materials. However, the railbed, subgrades and all structures, culverts and related items would remain in place and not disturbed. All salvage activities would occur within the existing right-of-way using existing access routes.

IN also notes that the abandonment would result in the removal of 23 public at-grade crossings, 22 private at-grade crossings and one highway overpass (U.S Highway 12).

According to IN, it is unaware of any adverse effects that the proposed abandonment would have on local and existing land use plans or prime agricultural farmland. The Michigan Department of Agriculture and Rural Development Office states that it finds no potential impacts

¹ The 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 1102X.

to the Farmland and Open Space Preservation Act nor does it anticipate any impacts on established county or inter-county drains. The Natural Resources Conservation Service (NRCS) has not responded. Although OEA does not believe that any prime farmland would be affected if salvage activities are limited to the railroad right-of-way, a copy of this EA will be provided to the NRCS for review and comment.

The Line does not lie within a designated Coastal Zone Management Area.

IN does not believe that the Line is suitable for use as a highway, or other form of mass transit, conservation, energy production or transmission. IN states that interest has been expressed in converting the Line into recreational trail use.

IN states that there are no known hazardous materials waste sites or sites where known hazardous material spills have occurred on or along the Line.

OEA conducted a search the U.S. Fish and Wildlife Service's (USFWS) website² to search for any species of concern in Branch and St. Joseph Counties, MI. The USFWS website lists the following species as threatened, endangered and candidate species:

- Mitchell's satyr Butterfly (*Neonympha mitchellii mitchellii*) – Endangered
- Copperbelly water snake (*Nerodia erythrogaster neglecta*) – Endangered
- Eastern Massasauga (*Sistrurus catenatus*) – Candidate
- Eastern prairie fringed Orchid (*Platanthera leucophaea*) – Threatened
- Indiana bat (*Myotis sodalis*) – Endangered

Upon review of the list of endangered, threaten, and candidate species identified in the Branch and St. Joseph counties, OEA does not believe that any salvage activities associated with the abandonment would result in any adverse impacts to these species. Nevertheless, OEA has provided a copy of this EA to the USFWS for review and comment.

The Michigan Department of Natural Resources (MI-DNR) states that there are no known wildlife resource concerns in the proposed project area. Although the Line does cross numerous streams and lies adjacent to some small ponds and lakes, abandonment activity would not result in adverse effects. Furthermore, MI-DNR states there are no occurrences of federal or state listed or endangered, threatened or state or federal public lands that would be affected by the proposed abandonment.

OEA was not able to identify any National or State parks, wildlife sanctuaries, or refuges that would be affected by the proposed abandonment. OEA did however identify 2 local parks located adjacent to the Line in the Village of Burr Oak: 1) Railroad Park and 2) Riverland Park,

² U.S. Fish and Wildlife Website, Find Endangered Species:
<http://www.fws.gov/endangered>.

South. However, OEA does not believe that the abandonment and salvage, as described, would result in any adverse effect to the 2 local parks located in the Village of Burr Oak.

The National Park Service has not responded to the railroad's environmental report. OEA has provided a copy of this EA to the National Park Service for review and comment.

According to IN, it would not alter the contour of the railbed nor alter or remove any structures in, or under any water, wetland or 100 year flood plain. Furthermore, IN does not anticipate the discharge of any materials into navigable waters that would require permits under Sections 402 and 404 of the Clean Water Act.

The U.S. Army Corps of Engineers, Detroit District (Corps) states that regulatory authority for this area was assumed by the Michigan Department of Environmental Quality (MDEQ) and that separate authorization by the Corps is not required. The MDEQ states that it did not identify any concerns with regard to water quality, designated wetlands or 100 year floodplains, therefore, no permits are required.

In an email dated July 9, 2012, the U.S. Department of Commerce, National Geodetic Survey states that no geodetic station markers are located in the area of the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would result in significant environmental impacts.

Other Comments

OEA was also provided 10 copies of a form letters from residents of Bronson, MI. In these letters, the residents indicate that they all property owners that are located adjacent to the Line and raise the following issues/concerns:

- a. The residents have been negatively impacted by the railroad for the past 40 years. The residents state that IN has been negligent by damaging a culvert that has created a swamp on their property.
- b. The residents state that the Line has not been maintained and is overgrown with noxious weeds, litter and/or fallen trees.
- c. The residents are concerned about noise, garbage and/or public safety that may result if the Line is converted to a recreational trail.
- d. The residents state that they should be provided an opportunity to first purchase the property before it is converted into a recreational trail.

OEA notes that the issues and concerns raised by the residents are not related to the scope of this Environmental Assessment, which is the potential environmental effect of salvaging the

rail line. To ensure that any salvage activities conducted by IN do not aggravate the drainage issue raised by the concerned residents, OEA is recommending a condition requiring that IN explain its salvage plans to the affected residents and take reasonable steps to prevent further water drainage problems along the Line. With respect to recreational trail use, the Board's role is ministerial and therefore, is not considered "a major federal action" under the National Environmental Policy Act. This means that the Board does not conduct an environmental analysis of the conversion of a rail line to a trail. See *Goos v. ICC*, 911 F.2d 1283, 1295 (8th Cir. 1990).

HISTORIC REVIEW

The Line was originally constructed in 1849 by the Michigan Southern Railroad Company (MSR). In 1833, a charter was granted to the Erie and Kalamazoo Railroad Company by the Michigan Territorial Council to construct a railroad from Port Lawrence on Lake Erie to Adrian in Lenawee County and then on across the State of Michigan to the Kalamazoo River, providing access to Lake Michigan. Following a final boundary adjustment known as the 'Toledo War,' about one-third of the railroad was determined to be located in Ohio. On August 1, 1849, the Line was leased into perpetuity to MSR.

Between 1846 and 1852, MSR completed its rail line construction around Lake Michigan to Chicago, IL. MSR consolidated with the Northern Indiana in 1855 and become the Michigan Southern and Northern Indiana Railroad. Fourteen years later, in 1869, the Michigan Southern and Northern Indiana Railroad merged with the Lake Shore Railway to become the Lake Shore and Michigan Southern Railroad (LSMSR). Later in 1869, it merged with the Buffalo and Erie Railroad with its rail line now reaching into New York.

On December 22, 1914, the New York Central and Hudson River Railroad merged with the LSMSR to form the New York Central Railroad. In 1968, the New York Central Railroad merged with Penn Central and in 1976 it became part of Conrail. It was later abandoned by Conrail and purchased by the Branch and St. Joseph County Rail Users Association. The Line was purchased by IN in 2004.

If the abandonment is approved, IN states that it intends to salvage the rail, ties and track materials. Salvage would occur only on the top of the railbed. The railbed, subgrades and all structures, culverts and related items would remain in place and not disturbed.

In its Historic Report, IN states that the Line contains five bridges that are 50 years old or older. Based on available information, IN believes the proposed abandonment would not adversely affect sites or structures eligible for listing in the National Register of Historic Places is located on the Line or would be affected by the proposed abandonment. IN also opines that no culturally significant locations, archaeological sites or unique landforms would be affected by the abandonment, as proposed.

IN served the Historic Report as required by the Board's environmental rules (49 C.F.R. § 1105.8(a)) and served the report on the Michigan State Housing Development Authority,

Historic Preservation Office (SHPO) pursuant to 49 C.F.R. § 1105.8(c).³ In a letter dated September 11, 2012, the SHPO offers an opinion that no historic properties are affected within the area of potential effects.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.⁴ The database indicated that the following 5 tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment:

1. Citizen Potawatomi Nation, Oklahoma
2. Forest County Potawatomi Community, Wisconsin
3. Hannahville Indian Community, Michigan
4. Pokagon Band of Potawatomi Indians, Michigan and Indiana
5. Prairie Band of Potawatomi Nation, Kansas

Accordingly, OEA is sending a copy of this EA to the 5 tribes listed above for review and comment.

CONDITIONS

Indiana Northeastern Railroad Company shall provide a copy of its salvage plan to the affected residents of Bronson, MI, and take reasonable steps to ensure that salvage activities do not result in water drainage problems.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed and with the imposition of the recommended condition, abandonment of the

³ 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>.

⁴ Native American Consultation Database, http://grants.cr.nps.gov/nacd/NACD_Search_Page_Query_Results.cfm (last visited October 9, 2012).

Line will 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 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

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 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office 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 original and 2 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 website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 1102X 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: October 12, 2012.

Comment due date: October 29, 2012.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment