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SERVICE DATE – MAY 17, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-295 (Sub-No. 6X)

THE INDIANA RAIL ROAD COMPANY–ABANDONMENT EXEMPTION–
IN MONROE COUNTY, IN

Decided: May 16, 2005

The Indiana Rail Road Company (INRD) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 2.44-mile portion of its Ellettsville Branch from milepost Q216.13 near Loesch Road to the end of the line at Ellettsville, milepost Q213.69, in Monroe County, IN. Notice of the exemption was served and published in the Federal Register on April 15, 2005 (70 FR 19987-88). The exemption is scheduled to become effective on May 17, 2005.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 22, 2005. In the EA, SEA notes that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends that INRD provide NGS with at least 90 days’ notice prior to initiation of any salvage operations that may disturb or destroy the geodetic station marker so that plans can be made for its relocation. Also, in the EA, SEA states the U.S. Fish and Wildlife Service (FWS) has expressed concern regarding the proposed project’s proximity to karst features that may support unique subterranean ecosystems. Therefore, FWS recommends, and SEA agrees, that if sinkholes or springs are encountered within the project area, INRD shall protect and buffer such sinkholes or springs with 25 feet of undisturbed vegetation prior to the onset of salvage activities. In addition, SEA recommends that INRD shall also follow these FWS recommendations to avoid, minimize or mitigate any potential harm to the project area during salvage activities: (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 soils to prevent runoff to waterways and wetlands; and (4) if removal of the bridge over Jack’s Defeat Creek is proposed, avoid work in the stream channel during primary fish spawning season (April 1-June 15). SEA notes in the EA that the U.S. Environmental Protection Agency - Region 5 (USEPA) raised a number of concerns regarding the proposed action and, accordingly, SEA recommends that, prior to any salvage activities, INRD be required to consult with USEPA (312-353-5206) to ensure that USEPA’s concerns are appropriately addressed. Finally, SEA notes that the Indiana Division of Historic Preservation and Archeology (SHPO) has not yet completed

its evaluation of the potential impact of the project on historic resources. Therefore, SEA recommends that INRD retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line that are 50 years old or older, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

A comment was received by SEA following issuance of the EA. SHPO has completed its evaluation of potential impacts of the project. SHPO states that the proposed abandonment will have no effect on historic properties. However, SHPO finds that there may be a potential for previously undiscovered archaeological resources to be located within the project area. Therefore, SEA recommends that in the event that archaeological artifacts or human remains are discovered during salvage activities associated with the proposed abandonment, INRD be required to cease work and contact SHPO at 317-232-1646 within 2 days of such findings. This new condition will be substituted for SEA's original historic preservation condition. Therefore, the conditions recommended by SEA in the EA, as amended, will be imposed.

On April 8, 2005, the Monroe County Parks and Recreation Department (the County) filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. The County has submitted a statement of willingness to assume financial responsibility for the 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, as required at 49 CFR 1152.29, and have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response submitted on April 12, 2005, INRD states that it consents to the issuance of a NITU.

Because the County's request complies with the requirements of 49 CFR 1152.29 and INRD 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 final agreement, no further Board action is necessary. If no agreement is reached within 180 days, INRD may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 served and published in the Federal Register on April 15, 2005, exempting the abandonment of the line described above is modified to the extent

necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until November 14, 2005), and subject to the conditions that INRD shall: (1) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the geodetic station marker so that plans can be made for its relocation; (2) prior to any salvage activities, protect and buffer any sinkholes or springs that are encountered within the project area with 25 feet of undisturbed vegetation, and follow the above specified FWS recommendations to avoid, minimize or mitigate any potential harm to the project area during salvage activities; (3) prior to any salvage activities, consult with the USEPA (312-353-5206) to ensure that USEPA's concerns are appropriately addressed; and (4) cease work and contact SHPO at 317-232-1646 within 2 days in the event that archaeological artifacts or human remains are discovered during salvage activities associated with the proposed abandonment.

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 November 14, 2005, interim trail use may be implemented. If no agreement is reached by that time, INRD may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary