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SERVICE DATE – SEPTEMBER 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-865X

HONEY CREEK RAILROAD, INC.–ABANDONMENT EXEMPTION–
IN HENRY COUNTY, IN

Decided: September 16, 2004

The Honey Creek Railroad, Inc. (HCR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN.¹ Notice of the exemption was served and published in the Federal Register on August 20, 2004 (69 FR 51751). The exemption is scheduled to become effective on September 21, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 27, 2004. In the EA, SEA states that the U.S. Environmental Protection Agency (EPA), Region 5, has expressed concerns regarding HCR's the removal and salvage methods to be used by HCR during abandonment activities, the final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices to be used during abandonment activities. Specific mitigation measures suggested by EPA include: using existing public and private crossings when removing materials, particularly in wooded areas and areas adjacent to wetlands; restoring disturbed soil to original grade; and reseeded disturbed areas with native flora. Therefore, SEA recommends that, prior to commencement of any salvage activities, HCR be required to consult with EPA, Region 5, regarding removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices to be used during abandonment activities. SEA also recommends that HCR use existing public and

¹ HCR acquired the line in Honey Creek Railroad, Inc.–Acquisition and Operation Exemption–Line of Consolidated Rail Corporation, Finance Docket No. 32332 (ICC served Sept. 20, 1993). There, it was specified that the line runs between Consolidated Rail Corporation's milepost 104.1 and milepost 110.05. HCR states that these designations were not utilized by it in connection with HCR's rail operations.

private crossings when removing materials, particularly in wooded areas and areas adjacent to wetlands, restore disturbed soil to original grade, and reseed disturbed areas with native flora.

SEA also states that the Indiana Department of National Resources (DNR) has advised that formal approval by DNR under the regulatory programs administered by the Division of Water is not required for this abandonment. However, DNR states that any work proposed on the bridge over Bell Creek may require prior approval from DNR under the Flood Control Act, unless the work qualifies for an exemption. Therefore, SEA recommends that HCR consult with DNR to determine if any permits are required prior to undertaking any salvage activities that would impact Bell Creek.

Comments to the EA were due by September 13, 2004. No comments were received. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On September 7, 2004,² the Indiana Trails Fund, Inc. (ITF) filed a request for 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), and for a public use condition under 49 U.S.C. 10905, to negotiate with HCF for acquisition of the right-of-way (ROW). ITF 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 payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on September 1, 2004, HCR states that it agrees to the issuance of a NITU.

Because, ITF's request complies with the requirements of 49 CFR 1152.29 and HCR is willing to negotiate for trail use, a NITU will be issued for the subject line. 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, HCR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in the EA that the ROW may be suitable for other public use following abandonment. As noted above, ITF has also requested a 180-day public use condition to negotiate with HCR for use of the ROW as a recreational trail. ITF requests that HCR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that HCR be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day

² Although the NITU and public use requests were submitted to the Board on August 25, 2004, and simultaneously filed with HCR on that same date, the requests were not considered filed until completion of the filing fee was received on September 7, 2004.

period from the effective date of the abandonment exemption. ITF states that the time period is needed to conduct negotiations with HCR.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the period of time requested. Accordingly, a 180-day public use condition will be imposed commencing with the effective date of the exemption. If a trail use agreement is reached on a portion of the ROW, HCR 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, HCR is not required to deal exclusively with ITF, 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 served and published in the Federal Register on August 20, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations, as set forth below, for a period of 180 days commencing from the September 21, 2004 effective date of the exemption (until March 20, 2005) and subject to the conditions that HCR shall: (1) (a) prior to commencement of any salvage activities, consult with EPA, Region 5, regarding removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices to be used during abandonment activities, and (b) use existing public and private crossing when removing materials, particularly in wooded areas and areas adjacent to wetlands, restore disturbed soil to original grade, and reseed disturbed areas with native flora; and (2) consult with DNR to determine if any permits are required prior to undertaking any salvage activities that would impact Bell Creek.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, HCR may discontinue service and salvage track and related materials.

HCR shall keep intact the ROW, including bridges, trestles, culverts and tunnels, for a period of 180 days 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 March 20, 2005, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

4. 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 ROW.

5. 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 ROW.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by March 20, 2005, interim trail use may be implemented. If no agreement is reached by that time, HCR may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its service date.

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

Vernon A. Williams

Secretary