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SERVICE DATE – LATE RELEASE NOVEMBER 7, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1102X

INDIANA NORTHEASTERN RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN BRANCH AND ST. JOSEPH COUNTIES, MICH.

Decided: November 6, 2012

Indiana Northeastern Railroad Company (IN) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 19.37 miles of rail line located between milepost 81.32 near Coldwater in Branch County, Mich., and milepost 100.69 near Sturgis in St. Joseph County, Mich. Notice of the exemption was served on October 9, 2012, and published in the Federal Register on October 10, 2012 (77 Fed. Reg. 61,657). The exemption is scheduled to become effective on November 8, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on October 12, 2012. In the EA, OEA states that it was provided 10 copies of a form letter from residents of Bronson, Mich., in which the residents indicate that they are property owners located adjacent to the line and share their concerns regarding, among other things, a drainage issue. Accordingly, to ensure that any salvage activities conducted by IN do not aggravate the drainage issue raised by the concerned citizens, OEA is recommending a condition that IN shall provide a copy of its salvage plan to the affected residents of Bronson, Mich., and take reasonable steps to ensure that salvage activities do not result in water drainage problems. Comments on the EA were due by October 29, 2012. No comments were filed. The condition recommended in the EA will be imposed.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On October 17, 2012, the Branch Area Bike Association (BABA) filed a request for the issuance of a public use condition under 49 U.S.C. § 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for the entire right-of-way involved in this proceeding. Pursuant to 49 C.F.R. § 1152.29, BABA has submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required by 49 C.F.R. § 1152.29. By response filed on November 5, 2012, IN has indicated its willingness to negotiate with BABA for interim trail use.

Because BABA's request complies with the requirements of 49 C.F.R. § 1152.29, and IN 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 an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, IN may fully abandon the line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As noted above, BABA also requested a 180-day public use condition for the right-of-way. BABA requests that IN be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that IN be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, ballast, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. BABA states that it seeks to preserve the right-of-way for both recreational trail purposes and as a nature and environmental enhancement to the surrounding area. BABA states that the 180-day period is needed to begin negotiations with IN.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because BABA has satisfied these requirements, a 180-day public use condition will be imposed, requiring IN to keep intact the right-of-way (including trail-related structures such as bridges, trestles, railroad ballast, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the November 8, 2012 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on May 7, 2013, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until May 6, 2013). If a trail use agreement is reached on a portion of the right-of-way prior to May 7, 2013, IN must keep the remaining portion of the right-of-way intact for 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, IN is not required to deal exclusively with BABA, but may engage in negotiations with other interested persons.

As conditioned, this action 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 on October 9, 2012, and published in the Federal Register on October 10, 2012, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit BABA to negotiate with IN for trail use, for a period of 180 days from the service date of this decision and notice (until May 6, 2013); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the November 8, 2012 effective date of the exemption (until May 7, 2013). In addition, the exemption is subject to the condition that IN shall provide a copy of its salvage plan to the affected residents of Bronson, Mich., and take reasonable steps to ensure that salvage activities do not result in water drainage problems.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, IN may discontinue service over the line. IN shall keep intact the right-of-way, including bridges, trestles, railroad ballast, culverts, and tunnels, and shall refrain from disposing of the line, except the tracks, ties, and signal equipment, 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 May 6, 2013, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the rail line covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 7, 2013, interim trail use may be implemented. If no agreement is reached, IN may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

9. This decision and notice is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.