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SERVICE DATE - SEPTEMBER 16, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-414 (Sub-No. 2X)

IOWA INTERSTATE RAILROAD, LTD.--ABANDONMENT EXEMPTION—
IN MARION COUNTY, IA

Decided: September 15, 1998

By decision served August 11, 1998, the Board granted Iowa Interstate Railroad, Ltd. (IAIS) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its line of railroad extending from milepost 123.5 near Otley to the end of the line at or near milepost 114.80 in Pella, a distance of 8.70 miles, in Marion County, IA. The exemption was scheduled to become effective on September 10, 1998.

On August 10, 1998, the Iowa Natural Heritage Foundation (INHF) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and imposition of a 180-day public use condition under 49 U.S.C. 10905.¹

INHF requests that IAIS be prohibited from disposing of the corridor, including the tracks, ties and signal equipment, except for public use on reasonable terms, and that IAIS be barred from removing or destroying any trail-related structures, such as bridges, ballast, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. INHF states that the 180-day period is needed to complete negotiations with IAIS. INHF also submits a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledges that use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile transmitted August 19, 1998, IAIS indicates its willingness to negotiate with INHF for interim trail use only for that portion of the line located between milepost 123.5 near Otley, IA, and a point at or near milepost 117.68 near the eastern edge of the U.S. Highway 163 overpass. IAIS states that the remainder of the line between milepost 117.68 and the end of the line at or near milepost 114.80 is the subject of a sale

¹ The notice pursuant to 49 U.S.C. 10502(b), which was served and published in the Federal Register on May 13, 1998 (63 FR 26676), provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 had to be filed no later than June 2, 1998. When good cause is shown, however, filings will be accepted after the due date. See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997). Because there is no indication that INHF's late-filed request would prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X) slip op. at 1 n.1 (STB served Nov. 7, 1997).

commitment to a local community organization in Pella, IA. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding for that portion of the line between milepost 117.68 and milepost 114.80. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

Because INHF's request complies with the requirements of 49 CFR 1152.29 and IAIS is willing to enter into negotiations for a portion of the line, a NITU will be issued for that portion. 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. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 Trails at 609. Under section 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.

INHF's submission meets the requirements for a public use condition 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 time period requested. Accordingly, the requested 180-day public use condition will be imposed for the entire line² commencing from the 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 execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, IAIS 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, IAIS is not required to deal exclusively with INHF, but may engage in negotiations with other interested persons.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

² While a NITU cannot be issued for the portion of the line between milepost 117.68 and milepost 114.80, imposition of a public use condition does not require the owning railroad's consent. Moreover, IAIS has not demonstrated that the referenced sale commitment as to that portion of the line to a local community organization is for public purposes.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served on August 11, 1998, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for that portion of the line located between milepost 123.5 near Otley, IA, and a point at or near milepost 117.68 near the eastern edge of the U.S. Highway 163 overpass, and is subject to the condition that IAIS keep intact the right-of-way underlying the entire track, including tracks, ties, signal equipment, bridges, ballast, trestles, culverts, and tunnels for a period of 180 days after the September 10, 1998 effective date (until March 9, 1999) to enable any State or local government agency, or other interested person to negotiate for acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the 180-day expiration period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
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 specific date.
6. If an agreement for interim trail use/rail banking is reached by March 9, 1999, interim trail use may be implemented. If no agreement is reached by that time, IAIS may fully abandon the line.

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7. This decision is effective on the service date.

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

Vernon A. Williams
Secretary