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SERVICE DATE – JUNE 9, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 295 (Sub-No. 10X)

INDIANA RAIL ROAD COMPANY—ABANDONMENT EXEMPTION—
IN VIGO COUNTY, IND.

Decided: June 9, 2021

Indiana Rail Road Company (INDR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 5.92-mile rail line known as the Riley Spur, extending from milepost 6.48 to the end of the track at milepost 12.4 near Riley, in Vigo County, Ind. (the Line). Notice of the exemption was served and published in the Federal Register on May 11, 2021 (86 Fed. Reg. 25,933). The exemption is scheduled to become effective on June 10, 2021.

Vigo County, Ind. (Vigo County or the County), filed a request for issuance of a notice of interim trail use or abandonment (NITU) on May 19, 2021, to establish interim trail use/rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). INDR filed a letter on May 20, 2021, agreeing to negotiate with the County toward a NITU for the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on May 14, 2021, recommending that three conditions be imposed on any decision granting abandonment authority.

First, OEA stated in the Draft EA that the Indiana Department of Natural Resources (DNR) noted that the bridges present on the Line, and their supporting foundational structures, may be impeding upstream fish migration, and should be either removed or modified in such a way as to alleviate the potential for obstructing the passage of aquatic organisms prior to the abandonment of the rail line. Accordingly, OEA recommended that any decision granting abandonment authority include a condition that INDR consult with DNR regarding potential bridge-related mitigation measures prior to the commencement of salvage activities.

Second, OEA stated that the National Geodetic Survey (NGS) indicated that one geodetic survey marker is present in the right-of-way and could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring INDR to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for the geodetic survey marker to be preserved.

Third, OEA stated that DNR's Division of Historic Preservation & Archaeology (State Historic Preservation Office or SHPO) commented that no historic properties listed in or eligible for listing in the National Register of Historic Places (National Register) would be affected within the right-of-way of the proposed abandonment. The SHPO also noted that if any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law requires that the discovery must be reported to DNR. Accordingly, OEA recommended imposing an inadvertent discovery condition providing that, in the event that any archeological sites, human remains, funerary items, or associated artifacts are encountered during abandonment-related salvage activities, INDR will immediately cease all work and contact OEA, any interested federally recognized Tribes, and the SHPO, and OEA will consult with the parties to determine whether appropriate mitigation measures are necessary.

OEA issued its Final Environmental Assessment (Final EA) on June 4, 2021, indicating that no new comments were received. However, in the Final EA, OEA recommends that Condition 1 in the Draft EA (concerning bridge-related mitigation measures) be modified to clarify that, like the other recommended conditions, it applies only to abandonment-related salvage activities. OEA continues to recommend that the three conditions previously recommended in the Draft EA, as modified in the Final EA, be imposed. Accordingly, based on OEA's recommendation, the three conditions proposed in the Final EA will be imposed.

Interim Trail Use. Vigo County's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and INDR states that it is willing to negotiate interim trail use with the County. Because INDR agrees to Vigo County's request for a NITU and the County's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the one-year 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), (h). If no agreement is reached within one year, INDR may fully abandon the Line, subject to any outstanding conditions. See 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.

This decision, and the proposed abandonment if implemented as conditioned, 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. The notice served and published in the Federal Register on May 11, 2021, 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 to permit the parties to negotiate for trail use for

the rail line, for a period of one year from the service date of this decision and notice, until June 9, 2022. The abandonment is also subject to the following conditions:¹

(a) INDR shall consult with DNR regarding potential bridge-related mitigation measures prior to the commencement of abandonment-related salvage activities.

(b) INDR shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.

(c) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during INDR's abandonment-related salvage activities, INDR will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO, pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with interested federally recognized tribes, the SHPO, INDR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. 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.

4. 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 for the right-of-way described in paragraph 3 above.

5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

6. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, 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 June 9, 2022, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, INDR may fully abandon the Line, subject to any outstanding conditions.

¹ If the City implements trail use on the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

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

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.