

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1254X

WINAMAC SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN KOKOMO, HOWARD COUNTY, IND.

Docket No. AB 1255X

US RAIL HOLDINGS, LLC—ABANDONMENT EXEMPTION—IN
KOKOMO, HOWARD COUNTY, IND.

Decided: August 24, 2017

Winamac Southern Railway Company (WSRY) and US Rail Holdings, LLC (USRH) (collectively, Applicants), jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for WSRY and USRH to abandon 2.38 miles of rail line, known as the Russiaville Line, between milepost 181.26, at the west right-of-way (ROW) line of Webster Street, and the end of the line at milepost 183.64, at the south ROW line of Defenbaugh Street, in Kokomo, Howard County, Ind. (the Line).¹ Notice of the exemption was served and published in the Federal Register on July 26, 2017 (82 Fed. Reg. 34,733). The exemption is scheduled to become effective on August 25, 2017.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) recommending that one condition be imposed on any decision granting abandonment authority. In the EA, OEA stated that the Indiana Department of Natural Resources (SHPO) had commented that no known archaeological resources eligible for inclusion in the National Register of Historic Places (National Register) have been recorded within the proposed project area, and no archaeological investigations appear necessary provided that all project activities remain within the areas disturbed by previous construction. OEA stated that the SHPO is concerned that archaeological deposits can exist underneath the ROW and, if any prehistoric or historic archaeological artifacts or human remains are uncovered during salvage activities, the discovery should be reported to the SHPO. To address the SHPO's concerns, OEA recommends that, in the event that any unanticipated archaeological sites, human remains,

¹ In 2009, Applicants were authorized to jointly acquire the Line in addition to another line, pursuant to an agreement with Central Railroad Company of Indianapolis, through the offer of financial assistance (OFA) process. See Cent. R.R. Co. of Ind.—Abandonment Exemption—in Howard Cty., Ind., AB 511 (Sub-No. 4X) (STB served June 11, 2009). Applicants state that the other rail line acquired through the OFA process remains under the joint ownership of Applicants and is not part of this proceeding.

funerary items or associated artifacts are discovered during the salvage activities, Applicants shall immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, the Applicants, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

OEA issued its final EA on August 17, 2017, noting that no comments to the EA were received by the August 15, 2017 due date and reiterating its recommendation that the one previously recommended condition be imposed. Accordingly, the one condition recommended by OEA in the EA and final EA will be imposed.

In the EA, OEA also noted that the ROW may be suitable for other public use following abandonment and salvage of the Line. On August 18, 2017, the City of Kokomo (the City), late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with Applicants for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² Pursuant to 49 C.F.R. § 1152.29, the City has also submitted a statement of willingness to assume financial responsibility for the ROW and has acknowledged that the use of the ROW for trail purposes is subject to possible future reconstruction and reactivation of the ROW for rail service. In a letter filed on August 11, 2017, the Applicants notified the Board that it is willing to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and the Applicants are willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the ROW 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). If no agreement is reached within 180 days, the Applicants may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the ROW for trail purposes is subject to possible future reconstruction and reactivation of the ROW for rail service.

The City also late-filed a request for imposition of a public use condition under 49 U.S.C. § 10905 for the ROW. The City asks that the Applicants be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The City's justification for its request is that this corridor has considerable value for recreational trail

² Requests for interim trail use/rail banking were to be filed by August 4, 2017. See Winamac S. Ry.—Aban. Exemption—in Kokomo Howard Cty., Ind., AB 1254X et al., (STB served July 26, 2017). However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted.

purposes and that the 180-day period is needed to review title information and begin negotiations with the Applicants.

As an alternative to interim trail use under the Trails Act, the ROW 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 the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring the Applicants to keep intact the ROW (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from August 25, 2017, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, 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 February 21, 2018, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until February 20, 2018. If a trail use agreement is reached for a portion of the ROW prior to February 20, 2018, the Applicants must keep the remaining ROW intact for the remainder of the 180-day public use condition 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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, the Applicants are not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

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 City's late-filed requests for a NITU under 16 U.S.C. § 1247(d) and a public use condition are accepted and granted.

3. Upon reconsideration, the notice served and published in the Federal Register on July 26, 2017, 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 City to negotiate with the Applicants for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until February 20, 2018, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until February 21, 2018. The abandonment is also subject to the condition that Applicants shall, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the salvage activities, immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, the Applicants, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, the Applicants may discontinue service. The Applicants shall keep intact the ROW, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the exemption, until February 21, 2018, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the ROW for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the ROW.

5. 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 ROW (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 ROW.

6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the ROW for rail service and to the trail sponsor's continuing to meet its responsibilities for the ROW described in paragraph 5 above.

7. 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. See 49 C.F.R. § 1152.29(d)(2) and (h).

8. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the ROW 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.

9. If an agreement for interim trail use/rail banking is reached by February 20, 2018, for the ROW, interim trail use may be implemented. If no agreement is reached, the parties may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Rachel D. Campbell, Director, Office of Proceedings.