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September 8, 2003

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K St., N.W.  
Washington, D.C. 20423-0001

208935



RE: STB Docket No. AB-414 (Sub-No. 1X), Interstate Commerce Commission  
("ICC") Decision and Notice of Interim Trail Use or Abandonment.

Dear Secretary Williams:

On August 8, 1995, the ICC issued a Decision and Notice of Interim Trail Use (NITU) (attached at Tab A), authorizing the Iowa Interstate Railroad, Ltd. (IAIS) to negotiate a trail use agreement with the Iowa Natural Heritage Foundation (INHF) for 20.20 miles of line between Milepost 445 near Atlantic, Iowa and Milepost 465.20 near Audubon, Iowa. Subsequently, only 19.50 miles of line between Milepost 445 and Milepost 464.50 was conveyed via quitclaim deed to INHF, as described in the deed description portion of the quitclaim deed (attached at Tab B). This 19.50 miles of line was railbanked and converted to trail use/railbanking pursuant to the National Trails System Act, 16 U.S.C. 1247(d), and is currently operated by Cass and Audubon Counties. The remaining 0.7 mile portion was conveyed to the adjacent property owner(s) and was never the subject of a trail use agreement.

In the interest of clarifying the rights and responsibilities of all interested parties, I respectfully request that the NITU be modified to reflect that

- (1) only the 19.50 mile segment between MP 445 and MP 464.50 has been railbanked and is subject to interim trail use/railbanking, and
- (2) the 0.7 mile segment between MP 464.50 and MP 465.20 was never the subject of a trail use agreement, and is therefore not subject to interim trail use/railbanking.

Sincerely,

T. Scott Bannister  
Attorney for Iowa Interstate Railroad, Ltd.

### Attachments

cc: Evelyn Kitay, STB  
David Spohr, DOJ

A

**\*1 IOWA INTERSTATE RAILROAD, LTD.--ABANDONMENT EXEMPTION--IN CASS AND  
AUDUBON COUNTIES, IA**

Decided: July 28, 1995

Service Date: August 8, 1995

INTERSTATE COMMERCE COMMISSION  
DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT  
Docket No. AB-414 (Sub-No. 1X)

By the Commission, Chairman Morgan, Vice Chairman Owens, and Commissioners Simmons and McDonald.

The **Iowa Interstate Railroad, Ltd. (IAIS)**, seeks an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903 et seq. to abandon a line of railroad from milepost 445 at or near Atlantic, IA, to milepost 465.20, at the end of the track, at or near Audubon, IA, a distance of 20.20 miles. The United Transportation Union and the Railway Labor Executives' Association seek imposition of labor protective conditions. The Iowa Natural Heritage Foundation (INHF) requests issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), as well as a public use condition under 49 U.S.C. 10906. We will grant an exemption and issue a NITU, subject to the conditions discussed below.

According to IAIS, none of the five shippers [FN1] on the line will be adversely affected by the abandonment. The shippers are now being served by motor carriers because the line was embargoed in August 1993 due to severe damage as a result of flooding. One shipper, West Central Co-op, has relocated its operations to its facility at Adair, IA, on IAIS's main line. West Central Co-op accounted for 96% of the total shipments on the line in 1993, before the embargo. All the shippers were served with a copy of IAIS's petition for exemption.

Under 49 U.S.C. 10903-04, a rail line may not be abandoned without prior Commission approval. However, under 49 U.S.C. 10505, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903-04 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of abandoning this line, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101a(2) and (7) ]. By allowing IAIS to avoid maintenance and operating expenses on this line and to apply its assets more productively elsewhere on its system, exemption will promote safe and efficient rail transportation, foster sound economic conditions and encourage efficient management [49 U.S.C. 10101a(3), (5), and (10) ]. Other aspects of the rail transportation policy are not affected adversely.

The transaction is of limited scope because the proposed abandonment involves only 20.20 miles of line. Furthermore, regulation is not necessary to protect shippers from an abuse of market power because there are adequate transportation alternatives for the shippers on the line. The shippers have been served with a copy of the petition, and have not objected. However, to ensure that the shippers

are informed of our action, we will require IAIS to serve each with a copy of this decision within 5 days of the service date of this decision and certify to us that it has done so.

\*2 Under 49 U.S.C. 10505(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.-- Abandonment--Goshen, 360 I.C.C. 91 (1979).

IAIS submitted an environmental report with its petition and notified the appropriate Iowa agency of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) examined the environmental report, verified the data it contains, and analyzed the probable effect of the proposed action on the quality of the human environment. Both the U.S. Fish and Wildlife Service and the Iowa Department of Natural Resources state that several threatened or endangered species may be present around the right-of-way, but that their concerns would be assuaged if salvage were confined to the existing roadbed. In an environmental assessment (EA) issued March 17, 1995, SEA recommends that a condition be imposed requiring IAIS to confine its salvage operation of the rail line to the existing roadbed. No comments were received in response to the EA. We will impose the recommended condition.

Along with its request for a NITU, INHF has submitted a statement of willingness to assume financial responsibility for the right-of-way as required at 49 CFR 1152.29, and IAIS has agreed to negotiate with the proposed trail user. [FN2] While a petition containing an interim trail use statement need not be filed until 10 days after the date the notice of the exemption is published in the Federal Register [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) are applicable, and the criteria for imposing trail use and rail banking have been met.

Accordingly, we shall issue a NITU covering the line segment. Qualified entities other than INHF may file requests for interim trail use/rail banking within the 10-day period prescribed below. 49 CFR 1152.29(a). IAIS shall respond to any such additional requests filed. 49 CFR 1152.29(b)(5). Negotiations for an agreement may proceed during the 180-day period prescribed below. IAIS may negotiate with any qualified entity during the NITU period. If an agreement is executed, no further action by the Commission is necessary. If no agreement is executed within the allotted time, IAIS may consummate the abandonment. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10905. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions. Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this decision and notice will be postponed for an additional 10-day period. [FN3] In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold or operations are subsidized under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale or subsidy under the OFA procedures does not occur, trail use may proceed.

\*3 SEA also concluded that the line may be suitable for alternative public use. As an alternative to trail use, INHF has requested a public use condition under 49 U.S.C. 10906 barring IAIS from disposing of the corridor, including tracks, ties and signal equipment, except for public use, for a period of 180 days.

When the need for interim trail use/rail banking and public use is shown, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement. INHF has satisfied the public use criteria by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the desired duration of the condition; and (4) justification for the time sought. 49 CFR 1152.28(a)(2). PA 180-day public use condition will be imposed, commencing with the effective date of the exemption. [FN4] The public use negotiating period cannot be extended. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use process will be terminated to the extent of that agreement. If the trail use agreement covers the entire line, any separate public use process terminates, but if, however, a trail use agreement is executed only for a segment of line, the public use process is terminated only for that line segment.

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. Under 49 U.S.C. 10505, we exempt from the prior approval requirements of 49 U.S.C. 10903-04 the abandonment of the above-described 20.20-mile line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.-- Abandonment-- Goshen, 360 I.C.C. 91 (1979); (2) the condition that IAIS shall confine its salvage operation of the rail line to the existing roadbed; (3) the condition that IAIS keep intact the right-of-way underlying the line, including bridges, culverts and similar structures (but not track or track materials), for 180 days after the effective date of the exemption, so that any State or local government agency or other interested person may negotiate the acquisition of the line for public use; and (4) the requirement that IAIS comply with the terms and conditions for implementing interim trail use and rail banking for the line segment as set forth below.

2. Subject to the conditions set forth above, IAIS may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and materials consistent with interim trail use/rail banking after the effective date of this decision and notice. Tariff cancellations must refer to this decision and notice by date and docket number.

\*4 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 the right-of-way, any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and 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 of the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision, trail use may be implemented. If no agreement is reached by that time, IAIS may fully abandon the line, provided the conditions imposed above are met.

7. IAIS must serve a copy of this decision on each of the shippers on the line within 5 days after the decision is served, and certify to the Commission that service has been effected.

8. Notice will be published in the Federal Register on August 8, 1995.

9. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 7, 1995.

10. Formal expressions of intent to file an offer [FN5] of financial assistance under 49 CFR 1152.27(c)(2) and requests for interim trail use/rail banking must be filed by August 18, 1995, petitions to stay must be filed by August 23, 1995, and petitions to reopen must be filed by September 5, 1995.

11. If a formal expression of intent to file an offer of financial assistance has been timely submitted, an offer of financial assistance to allow rail service to continue must be received by the railroad and the Commission within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offer must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(2).

12. Offers of financial assistance and related correspondence to the Commission must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Office of Proceedings, AB-OFA."

Vernon A. Williams  
Secretary  
(SEAL)

FN1. The shippers are identified as West Central Co-op, CENEX--Land O'Lakes Agronomy Center, Agri-Land Farm Services, Aud-EX, and Exira Farm Supply.

FN2. INHF's submission, while complete in all other respects, did not contain a map as required under 49 CFR 1152.29(a)(1). We will accept INHF's trail use request provided it submits a map within 10 days of the service of this decision. See Burlington Northern Railroad Company--Abandonment Exemption--In Sedgwick, Harvey and Reno Counties, KS, Docket No. AB-6 (358X) (ICC served Mar. 22, 1994).

FN3. By letter filed January 24, 1995, Clark D. Pellett sought leave to intervene in this matter to seek to acquire a portion of the line for continued transportation purposes. Leave to intervene for that purpose is not necessary, but Mr. Pellett and others who may be interested in seeking to acquire or subsidize the line should note the schedule and mechanism provided for the OFA procedure in ordering paragraphs 10 and 11 of this decision.

FN4. Normally, we impose a public use condition under section 10906 precluding disposition of the right-of-way and the salvaging of bridges, culverts, and similar structures during the running of the condition, but not the salvaging of track and track materials. INHF has failed to justify extending the condition here to the removal of the track and track materials, and we will not do so.

FN5. See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

I.C.C.

1995 WL 465414 (I.C.C.)

END OF DOCUMENT

B

EXHIBIT "A"

AUDUBON TO ATLANTIC RAIL LINE

QUIT CLAIM DEED DESCRIPTION

Being a description of parcels of land and strips of land of varying widths constituting a continuous line of railroad property of approximately 19.50 miles in length extending from railroad Mile Post 445.0, a point which is located approximately on the east-west centerline of Section 22, Township 77 North, Range 36 West of the 5th PM, on the south end to Mile Post 464.50, more or less, a point located on the centerline of the Grantor's branch line approximately 300 ft., more or less, south of the centerline of South Division Street extended westerly in the town of Audubon, Iowa, on the north end, and generally fifty (50) feet on either side of the railroad's north-south branch line main track centerline, and generally described as follows, and graphically depicted and marked in yellow (the conveyed land is marked in yellow on the first map with an uncolored blank map following which shows the dimensions, deflection angles and other written notations) on the attached multiple page Exhibit "B":

Audubon County:

Beginning at the intersection of the centerline of the Grantor's branch line main track and a line normal to said centerline located approximately 300 feet, more or less, south of the centerline of South Division Street extended westerly in the town of Audubon, Iowa, which is also the east-west section line between Sections 28 and 21 of Township 80 North, Range 35 West of the 5th P.M.; thence southerly along said track centerline through Sections 28, 33, and 34, Township 80 North, Range 35 West of the 5th P.M.; thence southerly through Sections 3, 10, 15, 22, 27, 34, and 35, Township 79 North, Range 35 West of the 5th P.M.; thence southerly through Lot 1 of that un-named Fractional Section northerly of Section 5, and through Lot 5 and Lot 12 of that un-named Fractional Section north of Section 4, and southerly through Sections 4, 5, 8, 17, 18, and 19, Township 78 North, Range 35 West of the 5th P.M.; thence southerly through Sections 24, 25, and 36, Township 78 North, Range 36 West of the 5th P.M.

Cass County:

Thence southerly through Sections 1, 2, 11, 14, 23 and 22 of Township 77 North, Range 36 West of the 5th P.M.; to a termination at the intersection with the centerline of Grantor's former north-south railroad track centerline at Mile Post 445.0, more or less, which is approximately the east-west centerline of Section 22 in Township 77 North, Range 36 West of the 5th P.M.

EXCEPTING THEREFROM the specific parcels of real estate which are legally described as follows and which are graphically depicted as cross-hatched areas and marked in pink on the attached maps which constitute the multiple page Exhibit "B":

## Exira

Parcel 59: The Point of Beginning being on the North line of Section 4 and on a line twenty-five feet easterly of and parallel to the centerline of Grantor's main track; thence northerly and parallel to said main track centerline to a line normal to said track centerline located fifteen hundred feet northerly of said North line of Section 4, as measured along said track centerline; thence westerly along the last line intersected one hundred twenty-five feet; thence southerly and parallel to said main track centerline to said North line of Section 4; thence easterly along said North line to the Point of Beginning; all in Lots 4 and 8 of the un-named section north of Section 4, Township 78 North, Range 35 West of the Fifth Principal Meridian, Except the southerly 235 feet of the foregoing described Parcel, and further excepting therefrom the easterly 50 feet of said Parcel.

Parcel 60: The Point of Beginning being on a line twenty-five feet easterly of and parallel to the centerline of Grantor's main track and a line normal to said main track centerline located fifteen hundred feet northerly of the North line of Section 4, as measured along said track centerline; thence easterly one hundred twenty-five feet along said line normal to said track centerline; thence southerly and parallel to said track centerline to the southerly line of Third Street, extended westerly; thence westerly along said extended street line to said line twenty-five feet easterly of said track centerline; thence northerly and parallel with said track centerline to the Point of Beginning; all in Lots 8, 11, and 12 of that un-named section north of Section 4, Township 78 North, Range 35 West of the Fifth Principal Meridian.

## Audubon

Parcel 61: All of Grantor's interest in the east two hundred feet of the North Half of the Southeast Quarter of Section 20 and the West Half of the Southwest Quarter of Section 21, both lying westerly of a line twenty-five feet westerly of the parallel to the centerline of Grantor's main track and lying northerly of the northerly line of Broadway Street, produced westerly; Township 80 North, Range 35 West of the Fifth Principal Meridian.

Parcel 62: All of Grantor's interest in the West Half of the Southwest Quarter of Section 21 lying easterly of a line twenty-five feet easterly of and parallel to the centerline of Grantor's main track and lying northerly of the northerly line of Broadway Street; ALSO, an easement for buildings and other structures which extend southwesterly past said line easterly of said track centerline, said buildings and other structures not to be repaired or replaced if substantially damaged or destroyed; Township 80 North, Range 35 West of the Fifth Principal Meridian.

Parcel 63: All of Grantor's interest in the Southwest Quarter of the Southwest Quarter of Section 21 lying easterly of a line twenty-five feet easterly of and parallel to the centerline of Grantor's main track, lying northerly of the north line of Broadway Street and lying south of a line two hundred fifty feet south of

and parallel to the south of a line two hundred fifty feet southerly of and parallel to the southerly line of Broadway Street, Township 80 North, Range 35 West of the Fifth Principal Meridian.

Parcel 64: All of Grantor's interest in the North eight hundred feet of the North Half of the Northwest Quarter of Section 28 lying easterly of a line twenty-five feet easterly of and parallel to the centerline of Grantor's main track; Township 80 North, Range 35 West of the Fifth Principal Meridian.

D956/1/40458