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OEA

SERVICE DATE – JUNE 2, 2020

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**FINAL ENVIRONMENTAL ASSESSMENT**

Docket No. AB 1252 (Sub-No. 1X)

Eastern Idaho Railroad, LLC—Abandonment Exemption—  
In Bonneville County, Idaho

**ABANDONMENT TYPE**

The time for comments on the Draft Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption ( ) Petition for Exemption ( ) Regulated Abandonment

( ) **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, Eastern Idaho Railroad, LLC (EIRR) filed a verified notice with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Bonneville County, Idaho. The rail line proposed for abandonment extends approximately 0.76 miles from milepost 184.14 near Yellowstone Highway to milepost 184.90 near W. Broadway Street in the City of Idaho Falls (Idaho Falls), Idaho (the Line). On March 6, 2020, Idaho Falls filed a request for a public use condition pursuant to 49 C.F.R. § 1152.28 and a request for a Notice of Interim Trail Use (NITU) to provide time to negotiate for interim trail use/rail banking pursuant to 16 U.S.C. § 1247(d) (Trails Act) and 49 C.F.R. § 1152.29. In a response filed on March 11, 2020, EIRR notified the Board that EIRR is willing to negotiate an agreement for interim trail use with Idaho Falls.

Pursuant to the National Environmental Policy Act (NEPA), the Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) for this proceeding on March 20, 2020 for public review and comment. In the Draft EA, OEA recommended three environmental mitigation conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

The public comment period on the Draft EA ended on April 6, 2020. On April 6, 2020, Idaho Falls filed comments in the Board's docket for this proceeding alleging an omission in EIRR's notice of exemption and commenting on, and requesting changes to, the Draft EA. To permit consideration of Idaho Falls' comments and allow EIRR a reasonable opportunity to reply, the Board postponed the effective date of the exemption pending further Board order. On April 16, 2020, EIRR filed its reply responding to Idaho Falls' comments.

## **Comments on the Draft EA**

As noted above, Idaho Falls filed comments on the Draft EA on April 6, 2020 raising a number of concerns related to the Draft EA and other issues unrelated to OEA's environmental review process.

First, Idaho Falls states that EIRR's notice is incomplete because it does not include the following statements, with the appropriate option selected, required by the notice of exemption regulations at 49 C.F.R. § 1152.50(d)(1): "Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it." Idaho Falls requests that OEA recommend an environmental mitigation condition requiring EIRR to state whether (based on information available to EIRR) the Line has federally granted parcels and to promptly provide all documentation bearing on federally granted rights-of-way for the Line in its possession. The procedural requirements for notices of exemption, however, are outside the scope of OEA's environmental review, and the requested recommendation therefore is beyond OEA's purview.

Second, Idaho Falls requests that OEA find that the Line is suitable for public use or recommend such a finding to the Board. OEA notes that the imposition of a public use condition is outside the scope of OEA's environmental review. In this case, as in all abandonment proceedings, OEA provided general information in the Draft EA regarding the process for filing requests with the Board for the imposition of a public use condition pursuant to 49 C.F.R. § 1152.28. OEA does not, however, assess the suitability of rail line rights-of-way for public use following abandonment as part of its environmental review process under NEPA.

Third, Idaho Falls requests clarification of and modification to Condition 3, which concerns the historic review process under Section 106 of the National Historic Preservation Act (NHPA). As recommended in the Draft EA, the condition reads:

**Eastern Idaho Railroad, LLC (EIRR) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f [sic], has been completed. EIRR shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the Idaho State Historic Preservation Office and the public. EIRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**

Idaho Falls argues that, if the Board were to impose this condition before an interim trail use/rail banking agreement is reached, EIRR could be required to maintain its current interest in the rail right-of-way until completion of the Section 106 process and might be unable to alienate the rail right-of-way to Idaho Falls for the purpose of interim trail use. Idaho Falls also asserts

that the condition, if imposed as recommended in the Draft EA, would appear to prohibit EIRR or Idaho Falls from removing tracks and ties as part of the conversion of the Line to a trail under the Trails Act. Idaho Falls argues that the recommended condition is inconsistent with the Draft EA's description of how Condition 3 would apply if EIRR and Idaho Falls were to reach an interim trail use agreement.

In its April 16, 2020 reply to Idaho Falls' comments, EIRR states that it does not take issue with Idaho Falls' request for modifications to Condition 3 as described above. EIRR also states, however, that it does not believe that modifications to Condition 3 are necessary to allow interim trail use under the Trails Act to proceed.

Board authorization to abandon a rail line is a federal undertaking/action subject to the NHPA and NEPA because, if the railroad consummates the abandonment, the Board's jurisdiction over the line terminates. However, a rail line that is authorized for abandonment but railbanked under the Trails Act is not abandoned for railroad purposes, and thus, the right-of-way remains under the Board's jurisdiction as part of the interstate rail system subject to potential reactivation of rail service for the duration of the interim trail use. Moreover, interim trail use under the Trails Act is non-discretionary—as long as the trail sponsor and the railroad satisfy the statutory requirements of the Trails Act, the Board does not have discretion to deny interim trail use. Accordingly, interim trail use under the Trails Act is not a federal action that is subject to environmental review under NEPA or a federal undertaking that is subject to review under Section 106 of NHPA. Therefore, when an interim trail use agreement is reached in an abandonment case, compliance with the historic preservation and environmental conditions imposed by the Board is not required while the line is utilized for interim trail use. Section 106 conditions, such as Condition 3 as recommended in the Draft EA, have not been and would not be interpreted to prohibit railroads from entering into interim trail use agreements with trail sponsors or from undertaking salvage related to interim trail use. Nevertheless, OEA is adding explanatory language in a footnote to the introduction to the recommended conditions in this case and in future abandonment cases to provide clarity. OEA is also modifying Condition 1 and Condition 2 for consistency with the revised introductory language.

Fourth, Idaho Falls notes that the official name of the park referred to as "Sportsman Park" in the Draft EA is "Pedersen Sportsman Park." OEA is modifying the language in the Draft EA appropriately.

Finally, Idaho Falls notes that the Draft EA contains a typographical error. The reference to "Port Canal" on page 7 of the Draft EA should have referred to "Porter Canal." That waterway is correctly identified elsewhere in the document. OEA is modifying the language in the Draft EA appropriately.

### **Modifications to the Draft EA**

Upon review of the comments received, OEA is adding a footnote to the introduction to the recommended conditions in this and future abandonment cases clarifying that if an interim trail use agreement is reached for a line (or a portion thereof), compliance with the Board's

environmental conditions is not required with respect to any portion of the line covered by the interim trail use agreement for the duration of the agreement.

OEA is also modifying Condition 1, which relates to local land use. The revised condition reads:

**Eastern Idaho Railroad, LLC (EIRR) shall consult with the City of Idaho Falls (Idaho Falls), Idaho regarding potential impacts to local recreation areas, including Pedersen Sportsman Park and the Idaho Falls Greenbelt trail, prior to undertaking abandonment-related salvage activities. EIRR shall implement the reasonable recommendations of Idaho Falls to minimize the impact of abandonment-related salvage activities to recreational areas.**

OEA is also modifying Condition 2, which relates to potential impacts to waterways and wetlands. The revised condition reads:

**Eastern Idaho Railroad, LLC (EIRR) shall consult with the U.S. Army Corps of Engineers (the Corps) prior to beginning any abandonment-related salvage activities that could result in the discharge of dredged or fill material into waters of the U.S., including wetlands. EIRR shall follow the Corps' reasonable requirements for obtaining a Corps permit under Section 404 of the Clean Water Act, if the Corps determines that such a permit would be necessary.**

OEA is modifying Condition 3 to reflect the current citation to Section 106 of NHPA. The revised condition reads:

**Eastern Idaho Railroad, LLC (EIRR) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. EIRR shall report back to the Office of Environmental Analysis regarding any consultations with the Idaho State Historic Preservation Office and the public. EIRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**

In addition to the modifications to the three recommended conditions, OEA is also revising the Draft EA as follows to address Idaho Falls' comments. The first sentence in the second paragraph on page 3 of the Draft EA is revised to read: "The Line is located immediately adjacent to Pedersen Sportsman Park (Sportsman Park), a local park located on the small island in the Snake River." The last sentence of the first paragraph on page 7 of the Draft EA is revised to read: "The only other known rail-related structure on the Line is a culvert located where the Line crosses Porter Canal."

## **Conclusions**

The Draft EA comment period has ended. OEA recommends that the following conditions, as modified by the recommendations in this document, be imposed upon any decision authorizing abandonment.<sup>1</sup>

- 1. EIRR shall consult with the City of Idaho Falls (Idaho Falls), Idaho regarding potential impacts to local recreation areas, including Pedersen Sportsman Park and the Idaho Falls Greenbelt trail, prior to undertaking abandonment-related salvage activities. EIRR shall implement the reasonable recommendations of Idaho Falls to minimize the impact of abandonment-related salvage activities to recreational areas.**
- 2. EIRR shall consult with the U.S. Army Corps of Engineers (the Corps) prior to beginning any abandonment-related salvage activities that could result in the discharge of dredged or fill material into waters of the U.S., including wetlands. EIRR shall follow the Corps' reasonable requirements for obtaining a Corps permit under Section 404 of the Clean Water Act, if the Corps determines that such a permit would be necessary.**
- 3. Eastern Idaho Railroad, LLC (EIRR) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. EIRR shall report back to the Office of Environmental Analysis regarding any consultations with the Idaho State Historic Preservation Office and the public. EIRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**

If the above conditions are imposed, OEA believes that the proposed abandonment will not significantly affect the quality of the human environment.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

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<sup>1</sup> If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.