

OEA

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423****DRAFT ENVIRONMENTAL ASSESSMENT****Docket No. AB-1065 (Sub-No. 4X)****Indiana Southwestern Railway Co. – Abandonment Exemption –
in Posey and Vanderburgh Counties, Ind.****BACKGROUND**

In this proceeding, Indiana Southwestern Railway Co. (ISW) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of interconnecting lines of railroad in Posey and Vanderburgh counties, Indiana. ISW's proposed abandonment extends over approximately 20.367 miles of interconnecting rail lines as follows: (1) between milepost 227.5 (at Poseyville, IN) to milepost 243.2 (at the centerline of North. St. Josephs Avenue near Evansville, Indiana), a total of approximately 15.7 miles; and (2) approximately 4.667 route miles from milepost 277.5 (at Poseyville, IN) to milepost 282.0 (at Cynthiana, IN) (the Lines). A map depicting the Lines in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINES

According to ISW data and valuation maps, the Lines' rights-of-way range in width from approximately 66 feet to approximately 100 feet (with a few sections running somewhat narrower and some stretches widening to as much as 130 feet). The Lines run adjacent to lands of varying uses, ranging from forests and farmland to developed and residential areas. The topography is generally flat, with some rolling hills. According to ISW, there are 48 at-grade rail-highway crossings on the Lines. Additionally, 18 bridges are present, and while ISW believes they are all over 50 years old, does not believe they have historic significance.

ISW previously filed a verified notice of exemption to abandon 17.2 miles of the interconnecting rail lines in October 2010. After a trails proponent filed a notice of interim trails use ("NITU"), the Surface Transportation Board ("Board") served a NITU on April 8, 2011. Ultimately, ISW was unable to reach an interim trail use/banking agreement with the trail proponent and the NITU expired on November 8, 2013. However, after the NITU expired, ISW did not file a notice of consummation of abandonment under 49 C.F.R. § 1152.29(e)(2) by the

January 7, 2014 deadline, ISW's authority to abandon the Lines automatically expired, and the Lines remained within the Board's jurisdiction. The current abandonment proposed by ISW includes the track proposed for abandonment in 2010, as well as an additional 3.167 miles of track.

ENVIRONMENTAL REVIEW

ISW submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Lines, including salvage. ISW served the E&H Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to ISW, no local traffic has moved over the Lines over the last two years, and overhead traffic on the Lines has been rerouted. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. ISW intends to salvage the Lines' track and track material (including tie plates, fasteners, crossties, and possibly the upper layer of ballast), sell the salvaged track to an affiliate to be used for track improvements elsewhere on the Pioneer system,² and sell the underlying real estate. ISW does not intend to disturb the sub-grade or sub-grade structures, and it would not engage in any excavation activity. ISW intends to eliminate 48 at-grade rail-highway crossings – 24 private crossings and 24 public crossings. ISW does not intend to remove or dismantle any of the 18 bridges along the Lines.

¹ The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "1065" "4" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on June 15, 2021.

² In March of 2000, ISW, then a non-carrier subsidiary of Pioneer, acquired the Lines

ISW requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.³ Two protected threatened or endangered species, the Indiana bat (*Myotis sodalist*) and northern long-eared bat (*Myotis septentrionalis*), are located in the area of the proposed abandonment. According to the IPaC report, there is no critical habitat for these species in the project area. OEA has determined that these federally listed threatened or endangered species would not be affected because there would be no disturbance to their natural habitat (including felling of trees or disturbance of caves) associated with proposed salvage activities. OEA is providing USFWS Indiana Ecological Services Field Office a copy of this EA for its review.

The Lines are not located within Indiana's designated coastal zone. ISW states that while the Lines are near agricultural land, their abandonment would not have any adverse impact on any prime agricultural land, and OEA concurs. According to ISW, the proposed abandonment appears consistent with local land use planning. As ISW intends to permanently close the 48 public at-grade rail-highway crossings if granted abandonment authority, ISW states that the proposed abandonment would have a net positive impact on local transportation safety.

ISW believes that permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) or Section 402 of the Clean Water Act (33 U.S.C. § 1342) would not be required for the proposed abandonment and that designated wetlands or 100-year flood plains would not be affected. ISW contemplates using the existing right-of-way for access, as well as existing public and private crossings as necessary. No new access roads are contemplated. ISW does not intend to disturb any of the underlying roadbed or to perform any activities that would cause sedimentation or erosion of the soil and does not anticipate any dredging or use of fill in the removal of the track material. The crossties and/or other debris, if removed, would be transported away from the Lines, and would not be discarded along the rights-of-way, or placed in streams or wetlands, or left along the banks of such waterways. Also, during track removal, appropriate measures would be implemented to prevent or control spills from fuels, lubricants, or any other pollutant materials from entering any waterways. While OEA is not recommending an environmental condition for water-related issues, OEA is forwarding a copy of this Draft EA to the Indiana Department of Environmental Management (IDEM), U.S. Environmental Protection Agency (USEPA), and U.S. Army Corps of Engineers – Louisville Field Office (Corps) for review and comment.

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to

from EVTC and ABR. See Ind. Sw. Ry. Co. – Acquisition and Operation Exemption – Evansville Terminal Co., Inc. and AB Rail Inv., Inc., FD 33859 (S.T.B. served Mar. 28, 2000). ISW became a carrier upon acquisition of the Lines.

³ <https://ecos.fws.gov/ipac/>, last accessed July 7, 2021

abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment: IDEM, Corps, USEPA, USFWS.

HISTORIC REVIEW

According to ISW the Lines may have been constructed in the early 1880s by the Evansville and Peoria Railroad, which thereafter became the Peoria, Decatur & Evansville Railway (PD&E). The Lines, particularly the segment between Poseyville and German Township, appear to have at one time been part of a longer through route extending between Evansville, IN, and Newton, IL. ISW's research also indicates that the PD&E, including the Lines that are the subject of the proposed abandonment, became part of the Illinois Central Railroad (IC) in 1900.

ISW believes that the Lines were part of a larger transaction, pursuant to which Indiana Hi-Rail Corporation (and an apparent affiliate, Garden Spot & Ohio) acquired a series of rail lines from IC. The Lines subsequently went through a series of operators, the last of which, prior to ISW, was Evansville Terminal Company, Inc. (EVTC). At the time that EVTC operated the Lines, AB Rail Investments, Inc. owned the Poseyville-Cynthiana line segment.

ISW served the E&H Report on the Indiana Department of Natural Resources' Division of Historic Preservation & Archaeology (State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁴ SHPO designated this project DHPA #27507 and states 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. SHPO identified two properties within the probable Area of Potential Effects (APE) that they believe may meet the criteria for eligibility for inclusion in the National Register of Historic Places:

Railroad Trestle, site #129-146-00017

Poseyville Historic District, site# 129-178-07001-178

The SHPO noted that the proposed abandonment includes leaving sub-grade features and structures, including all bridges, in place. Based on project information submitted by ISW to

⁴ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overseeing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

SHPO, SHPO does not believe that the characteristics that qualify these properties for inclusion in the National Register would be diminished. SHPO did request that any unanticipated discovery of prehistoric or historic archaeological artifacts or human remains uncovered during salvage activities be reported to the Department of Natural Resources in adherence to Indiana Code 14-21-1-27 and 29 and applicable federal statutes. OEA recommends adding a condition pertaining to unanticipated discoveries to any decision granting abandonment authority to ISW.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.5(b), and following consultation with SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <https://prod.stb.gov>. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁵ The database indicated that the following federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: Delaware Nation, Oklahoma; Miami Tribe of Oklahoma; Osage Nation; Peoria Tribe of Indians of Oklahoma; and Quapaw Tribe of Indians. Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

CONDITIONS

OEA recommends that the following condition be imposed on any decision granting abandonment authority:⁶

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

⁵ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed July 7, 2021).

⁶ 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 this condition is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of the Lines would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁸

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

⁷ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "1065" "4" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁸ Id.

COMMENTS

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Adam Assenza by email at adam.assenza@stb.gov or by phone at 202-245-0301.

Date made available to the public: July 9, 2021

Comment due date: July 26, 2021

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.

Attachment



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 Indiana Southwestern Railway Co.
 Abandonment Exemption
 in Posey and Vanderburgh Counties, Ind.

Legend

— the Lines

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



Indiana

