

SERVICE DATE – AUGUST 13, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1065 (Sub-No. 4X)

INDIANA SOUTHWESTERN RAILWAY CO.—ABANDONMENT EXEMPTION—IN
POSEY AND VANDERBURGH COUNTIES, IND.

Decided: August 12, 2021

Indiana Southwestern Railway Co. (ISW) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 20.367 miles of interconnecting rail lines (the Lines) in Posey and Vanderburgh Counties, Ind., as follows: (1) from milepost 227.5 (at Poseyville, Ind.) to milepost 243.2 (at the centerline of North St. Josephs Ave. near Evansville, Ind.), a total of approximately 15.7 miles; and (2) approximately 4.667 route miles from milepost 282.0 (at Poseyville, Ind.) to milepost 277.5 (at Cynthiana, Ind.). Notice of the exemption was served and published in the Federal Register on July 16, 2021 (86 Fed. Reg. 37,782). The exemption is scheduled to become effective on August 15, 2021.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on July 9, 2021, recommending that one condition be imposed on any decision granting abandonment authority. OEA recommended that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, ISW be required to immediately cease all work and notify OEA, interested federally recognized tribes, and the State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO (or the Tribal Historic Preservation Officer (THPO)), interested federally recognized tribes, ISW, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

OEA served its Final Environmental Assessment (Final EA) on July 30, 2021, noting that two comments were received. First, the Indiana Department of Natural Resources Division of Historic Preservation & Archaeology (Indiana's SHPO) commented that it concurred with OEA's finding in the Draft EA that there are no historic buildings, structures, districts, objects, or archaeological resources within the area of potential effects that would be affected by the proposed abandonment. Therefore, OEA states that no modifications or additional conditions are required in response to the SHPO's comments.

Second, the U.S. Fish and Wildlife Service (USFWS) commented, seeking clarification about whether track material remains in the Lines' right-of-way and what salvage-related activities would occur under the proposed abandonment. USFWS also clarified that the consultation process under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, involves

the lead agency making a “no effect,” “may affect, not likely to adversely affect,” or “may affect, likely to adversely affect” determination.

In response to USFWS’s comment, OEA states in the Final EA that it reviewed recent aerial photography and confirmed that track material does remain on the Lines to be abandoned. OEA states that, as it noted in the Draft EA, salvage activities would include the removal of rails, ties, fasteners, and possibly the upper layer of ballast but would not entail disturbance of the subgrade or the removal or felling of trees. OEA notes that ISW intends to eliminate 48 at-grade rail-highway crossings but does not intend to remove or dismantle any of the 18 bridges along the Lines. OEA further states that ISW noted in its environmental and historic report that all salvage activities would be accomplished from within the Lines’ existing right-of-way and could include the use of existing public and private crossings to access the Lines’ right-of-way, but no new access roads would be constructed. In addition, OEA states that salvage activities are typically conducted using specialized heavy equipment that operates from the existing rails, and this equipment would be expected to generate some noise, but it would be localized and temporary as the equipment moved down the right-of-way.

In further response to USFWS’s comment, OEA states that, consistent with the Draft EA, it determined that the proposed abandonment would have “no effect” on the two protected threatened or endangered species identified, the Indiana bat (*Myotis sodalist*) and the northern long-eared bat (*Myotis septentrionalis*), because of the limited scope and duration of salvage activities. Therefore, OEA states that no modifications or additional conditions are required in response to USFWS’s comment.

In the Final EA, OEA continues to recommend that the condition proposed in the Draft EA should be imposed. Accordingly, based on OEA’s recommendation, the condition proposed in the Draft EA and the Final EA will be imposed.

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. Upon reconsideration, the notice served and published in the Federal Register on July 16, 2021, exempting the abandonment of the Lines described above is subject to the condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during ISW’s abandonment-related salvage activities, ISW 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 the SHPO (or THPO),

interested federally recognized tribes, ISW, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.¹

3. This decision is effective on its service date.

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

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