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April 22, 2019

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VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 22, 2019
Part of
Public Record

Re: **Docket No. AB-290 (Sub-No. 117X)**
Norfolk and Western Railway Company – Abandonment Exemption –
Between Indianapolis and Tipton in Marion, Hamilton, and Tipton
Counties, Ind.

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding on behalf of the City of Fishers, Indiana, City of Noblesville, Indiana, and Hamilton County, Indiana, is the Consolidated Reply in Opposition to the Motion for to Vacate NITUs and to Reactivate Rail Service, and to the Verified Motion for Preliminary Injunction Pursuant to 49 U.S.C. § 1321(b)(4) both filed by U.S. Rail Holdings, LLC, on March 29, 2019.

Should any questions arise regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for City of Fishers, Indiana, City of
Noblesville, Indiana, and Hamilton County, Indiana

RAW/ah
Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

**NORFOLK AND WESTERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

**CONSOLIDATED REPLY IN OPPOSITON TO THE MOTION TO VACATE NITUS
AND TO REACTIVATE RAIL SERVICE, AND TO THE VERIFIED MOTION FOR
PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)**

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**ATTORNEY FOR CITY OF FISHERS,
CITY OF NOBLESVILLE, AND
HAMILTON COUNTY, INDIANA**

Dated: April 22, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

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The City of Fishers, Indiana (“Fishers”), the City of Noblesville, Indiana (“Noblesville”), and Hamilton County, Indiana (collectively the “Owners”) hereby respond in opposition to the “Motion to Vacate NITUs and to Reactivate Rail Service” (the “Vacate/Reactivate Motion”) and to the “Verified Motion for Preliminary Injunction Pursuant to 49 U.S.C. § 1321(b)(4)” (the “Injunction Motion”) – collectively, the “Motions” – filed with the Surface Transportation Board (the “Board”) in the above-referenced docket by US Rail Holdings, LLC (“USR”) on March 29, 2019.¹ For the reasons provided herein, USR’s Motions should be denied as untimely, inadequately supported by essential evidence, and counter to precedent.

BACKGROUND

In each of the Motions, USR has provided a “Statement(s) of Facts” that, collectively, provide a thorough procedural and factual history of circumstances surrounding – (1) a 37.56-mile railroad line segment, commonly known as “Nickel Plate Line,” extending from

¹ By Director’s Stamp Order served in these proceedings on April 16, 2019, the Owners have been afforded until April 22, 2019, to reply to the aforementioned Motions.

Indianapolis, Indiana to Tipton, Indiana; (2) corresponding trails use initiatives currently being pursued among the Owners, the City of Indianapolis, Fishers, and Noblesville under the Board's Notice of Interim Trails Use ("NITU") provisions; and (3) a roughly 21-mile portion of the Nickel Plate Line extending between mileposts I-2.13 (and Indianapolis) and I-23 (at Noblesville) subject to NITUs, which track segment USR has taken to identifying as the "NITU Line." See Vacate/Reactivate Motion at 1. The Owners accept, for current purposes, the Statement of Facts sections of the Motions, subject to two critical exceptions as follows:

- Contrary to USR's allegation (Injunction Motion at 5), Fishers has not executed an interim trails use agreement for the portion of the NITU Line traversing its jurisdiction. Rather, on January 14, 2019, Fishers Board of Public Works & Safety passed a resolution authorizing Fishers (as a Trail Sponsor) to enter into an interim trails use agreement with the Owners/HHPA. Also on January 14, 2019, the prospective trails use parties were presented with a license agreement – offered as Exhibit B to its USR's Motions – *but that license agreement has not been fully executed*. Accordingly, there has been no failure to comply with the Board's trails use agreement notice requirements.
- Along with Fishers, Indianapolis and Noblesville also have not yet executed trails use agreements with the Owners.

The Owners acknowledge, however, that they have not departed from plans to arrange for trails use arrangements for the NITU Line. And, while the Owners contemplate removal of trackage along the NITU Line in the near future, no such salvage activity has commenced.

PROCEDURAL ISSUE

The Motions have been filed in the AB-290 (Sub-No. 117X) docket as well as a completed, inactive proceeding, City of Fishers, City of Noblesville, and Hamilton County, Indiana – Petition for Partial Revocation of Exemption, Docket No. FD 36137. The Owners object to USRs filing in both dockets. In order to avoid perpetuating the mistaken assumption that this proceeding bears on the merits of the FD 36137 proceeding, the Owners have

determined to file this Reply in the pertinent docket – AB-290 (Sub-No. 117X) – and in that docket alone. This proceeding has to do with the Owners’ efforts to implement interim trails use pursuant to the abandonment processes initiated and concluded years ago in AB-290 (Sub-no. 117X), and the NITUs issued by the Board on December 21, 2018; USR’s efforts to have the NITUs vacated in contemplation of rail common carrier service reactivation; and USR’s corresponding request to have the Board enjoin the Owners from engaging in any track salvage.

Moreover, in the FD 36137 proceeding, the Board elected to include among the parties of record a host of individuals who had filed letters in opposition to the Owners’ initial trails use effort. Many of those parties have, more recently, expressed confusion and anger over receiving recent filings under the FD 36137 docket, and some have demanded that the Owners cease and desist from sending them service copies of any materials related to that proceeding. Nevertheless, if the Board determines that it remains appropriate to continue the subject proceedings in both the AB-290 (Sub-No. 117X) and FD 36137 dockets, then the Owners respectfully request to be informally so advised, so that they may arrange to serve the dozens of parties in the FD 36137 (and certify accordingly), and to advise those parties that the Owners are so doing at the Board’s behest and in accordance with the Board’s rules of procedure.

ARGUMENT

As indicated above and discussed more fully in the discussion following, USR’s Vacate/Reactivate Motion is premature, inadequately-supported, and meritless. The Injunction Motion is equally meritless and, moreover, is contrary to recent precedent. As such, the Motions should be denied.

The Owners’ pursuit of railbanking the Nickel Pate Line has spanned almost two years. As reaffirmed by the Board in December, the Owners and trail sponsors have clear

authority to proceed with their plans. All the while, the Owners have spent significant resources combatting frivolous claims by excursion advocates attempting to undermine and frustrate their trails use initiatives. Most recently, the City of Fishers was awarded attorneys' fees and costs against Save the Nickel Plate, Inc. (who has made various filings in both the FD 36137 docket and in this docket), under a ruling that taxpayers should no longer be forced to fund defense costs for frivolous litigation initiated by passenger excursion advocates. *See Save the Nickel Plate, Inc. v. City of Fishers Board of Public Works & Safety*, Cause No. 29D05-1809-PL-008614, Hamilton County, Indiana Superior Court (decided April 17, 2019).

USR's proposal to reactivate freight service is similarly meritless, and is simply a feeble continuation of excursion train efforts to block trails use. The Owners are ready to move forward with trails use and respectfully ask the Board to move swiftly in denying the Motions. The taxpayers of Fishers, Noblesville, and Hamilton County should not be forced to fund defense costs for hollow filings made by USR, and should USR continue to file subsequent, groundless motions, the Owners will ask the Board for an opportunity to recover its fees and costs or to impose sanctions against USR. At a minimum, the Board should require USR to reveal the source of funding to prepare and file the Motions and its prior STB filings.

A. The Vacate/Reactivate Motion is premature

As of the Board's decision served on December 21, 2019 (the "December 21 Decision"), USR is well aware of the arduous path by which USR might be able successfully to wrest a "reactivation right" for the NITU Line from the Owners. Specifically, and as USR has acknowledged, for USR to pursue a reactivation right for the NITU Line, it must seek to vacate

the subject NITU or NITUs for purposes of service restoration “after [1] a NITU or NITUs has or have been issued and [2] the Board is notified a Trails Act agreement has been reached.”²

USR cannot satisfy the requisite criteria, because, while the NITU Line is the subject of Board-issued NITUs, none of the NITU Line is yet the subject of an executed trails use agreement, and, thus, no one has had occasion to notify the Board of a finalized trails use arrangement. USR cannot show that the second enumerated element for vacation and reactivation under the December 21 Decision has been satisfied. As such, the Vacate/Reactivate Motion is premature and must be denied in keeping with Board guidance in this proceeding.

B. USR’s case for vacation of the NITU and reactivation of service on the NITU Line is grossly inadequate

Drawing from a passage from Ballard Terminal-2³ cited to in the December 21 Decision, USR notes that, to force the transfer of the Owners’ reactivation right, USR must demonstrate that – (a) the Owners have refused to restore the line in question to service in the presence of a financially viable common carrier service demand; (b) USR possesses sufficient financial wherewithal to assume the reactivation right in place of the Owners and to furnish common carrier service; and (c) shipper demand for service is sufficient to warrant reactivation. Again, the Board need not address any of the criteria now, since the Vacate/Reactivate Motion is premature. But even if the Board were to address the merits of reactivation despite the foundational inadequacy, the case for reactivation is wholly lacking.

Taking the issues as USR has presented them in the Vacate/Reactivate Motion, USR has provided no evidence that it possesses adequate financing to acquire the NITU Line,

² December 21 Decision, slip op. at 9.

³ Ballard Terminal R.R. – Acquis. & Operation Exemption – Woodinville Subdivision, FD 35731 et al. (STB served Dec. 30, 2014) (“Ballard Terminal-2”), slip op. at 4-5.

and for that matter, has not shown itself to be financially responsible. USR has offered flimsy, outdated, and non-committal statements of interest from prospective shippers that fail to demonstrate genuine need, much less a demand for rail service that is financially sustainable.⁴ And, finally, the Owners' have taken a responsible approach to interim trails use, recognizing that there is no genuine need of the NITU Line for rail service, and thus, USR offers no evidence that the Owners are acting in disregard of the reactivation mandate under which it would conduct itself once trails use arrangements have been negotiated.

1. USR has not proven that it possesses financial wherewithal

The primary evidentiary support for both Motions is a three-page "Second Verified Statement of Danielle Mitchell" (the "SVS Mitchell"). Among other things, Ms. Mitchell, USR's president, offers her latest verified statement for purposes of making the economic case for the forced transfer of the Owners' presumed reactivation right. Ms. Mitchell testifies about the estimated net liquidation value ("NLV") of the NITU Line, assuming, without legal support, that the forced transfer of the Owners' reactivation right would mean that USR would be entitled to assume ownership of the NITU Line assets.⁵ Ms. Mitchell states that the NITU Line's NLV is \$909,097, which she derives from a quote allegedly supplied to USR by Nottingham Rail Consulting ("Nottingham"). That quote, amazingly, is not itself introduced into the record. It is impossible to tell whether the NLV estimate is premised upon an accurate

⁴ The Owners have good reason to believe that some shipper statements of interests were executed and filed by individuals who were allied with, and supportive of, excursion passenger train advocates, but who lacked authority to bind their respective businesses. These same individuals also may have lacked the authority to submit formal filings with the Board, further demonstrating the lack of credibility amongst the supposed shipper interests.

⁵ See Owners' Reply in Opposition to Motion for Leave to File Rebuttal, and Response to Rebuttal, Docket No. AB-290 (Sub-No. 117X) (filed July 13, 2018), pages 12-14 (attached as Exhibit A).

inventory of the NITU Lines actual track assets, although it is more likely than not that the Nottingham quote is incomplete and based upon incorrect assumptions.

Nottingham's conspicuously-missing NITU Line NLV estimate is all the more dubious in light of an Owners'-commissioned NLV estimate for a nearly identical section of the Nickel Plate Line, presented to the Owners on July 18, 2018, by R.L. Banks & Associates (the "Banks Report"). The Banks Report is attached as Exhibit B. The supposed Nottingham estimate ostensibly valued the roughly 20.87-mile NITU Line at just above \$900,000, compared to the Banks Report estimate for roughly 20 miles of the Nickel Plate Line main line, plus roughly two miles of ancillary trackage, from Indianapolis through Noblesville, at an NLV of \$1,620,000. The Banks Report is a matter of public record, and, as such, the Owners are baffled as to why neither USR nor Nottingham would have accounted for this estimate in their own NLV analysis, and why USR and Nottingham failed to explain why or how they disagree with the NLV estimate in the Owners-commissioned study.

Aside from the missing track salvage value "quote," USR's evidence of financial wherewithal to fund the estimated \$1,076,057 to purchase and maintain the line boils down to a bald assertion that, in essence, *we must all take Ms. Mitchell's word for it*. USR plausibly contends that, to prove its financial capability here, it is best to adhere to the standards applicable to an offer of financial assistance ("OFA") set forth at 49 C.F.R. § 1152.27(c). Would that USR could do more than pay lip service to the OFA financial responsibility standards. The OFA regulations provide, among other things, that "evidence of financial responsibility include income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain

adequate insurance.”⁶ Instead of offering any of the above, as meager proof of the sufficiency of USR’s finances, we are treated to the following conclusory statement, comprising the entire substance of USR’s evidence of financial wherewithal:

USR has sufficient financing to purchase and operate the NITU Line. It presently has a line of credit that would more than cover the value of the NITU Line [as estimated] in paragraph 6.⁷

It is bad enough that USR’s inadequate showing of financial wherewithal turns upon a flimsy NLV estimate supplied by a third party whose written quote has been omitted from the Motions. Worse yet, USR’s proposal to acquire and maintain the NITU Line shows a neglect for basic due diligence. USR commits no discussion at all to the fact that the NITU Line segment currently lacks a physical connection to the interstate rail network, and that the missing track and switch connection would have to be installed prior to the commencement of common carriage. The far southerly portion of the NITU Line in Indianapolis, from roughly East 25th Street southward, lacks rails in places, and the line’s connection with other railroads has been removed. USR is evidently unaware of this, having never mentioned this circumstance in its Motions. In addition, the supposed Nottingham Rail Consultants estimate does not indicate if the NLV took this circumstance into account. USR has made no provision in its financing piece for the re-installation of missing trackage and connection, and it seems oblivious to the condition of the NITU Line where track exists and to the track rehabilitation costs USR would most certainly encounter were it to restore the NITU Line to service.⁸

⁶ 49 C.F.R. 1152.27(c)(iv)(b).

⁷ SVS Mitchell, par. 4.

⁸ See Track Inspection Report & Rehabilitation Plan (Draft – November 2016 – appendices removed), prepared by Jannotti Rail Consulting, Inc. (attached as Exhibit C).

The costs to acquire the NITU Line and restore it to service would be much higher than USR posits. The Vacate/Reactivate Motion reveals considerable inattention to critical detail in this regard, and USR's evidence of financial wherewithal is utterly lacking. Accordingly, USR has failed to satisfy the financial responsibility prong for third-party reactivation.

2. *USR's evidence of shipper and passenger demand is neither sufficient nor credible*

USR's evidence of adequate shipper demand for service over the NITU Line, such as it is, is stale and hopelessly vague. Rather than offer recent and firm (binding) written commitments from prospective on-line shippers to demonstrate a clear and convincing need for rail service at volumes high enough to make restored operations financially viable, USR resorts to recycling letters of purported shipper "interest," all of which date back to 2017 and 2018. None of the letters articulate a firm commitment to shipping any amount of traffic via rail. And, as the Owners previously pointed out in response to these expressions of interest, none of the prospective shippers have requested formally to participate in this proceeding or in the FD 36137 proceeding that concluded prior to the initiation of the present NITU matter.⁹

None of these letters demonstrates that 3,800 carloads of traffic will materialize if the NITU Line were to be reactivated. In fact, they suggest that it is likely that no traffic would materialize if the line were to be reopened. Ultimately, the letters are too vague and non-committal to be considered to be credible under the standard set forth in Ballard Terminal-2.¹⁰

⁹ The Owners have already dispensed with these hollow, non-committal letters of shipper interest, pointing out that the letters are not credible and fail to establish a genuine need for rail service. See Reply to Late-Filed Comments, FD 36137 (filed January 19, 2018), pages 6-7; Response to Comments, FD 36137 (filed October 23, 2017), pages 12-14. The selected passages from these pleading are attached as Exhibit D.

¹⁰ Ballard Terminal-2 at 7 (demand for freight service must not only be supported by credible evidence of need, but such expression of prospective shipper interest must include more than just vague support).

USR allegedly has partnered with an entity identifying itself as First Transit, Inc. (“FTI”), which purports to have an interest in seeing the NITU Line redeveloped for purposes of rail passenger service that would arguably qualify as common carriage, due to plans to connect such service to Amtrak intercity service at Indianapolis. FTI evidently has gone as far as to submit a letter to the Board, as correspondence, on April 2, 2019, exclusively in the FD 36137 proceeding. FTI and USR advance nothing more than an unfunded concept, explaining nothing about how such service would be remunerative or where the money would come from to pay for the restoration of the NITU Line to support higher-speed passenger operations. For that matter, neither FTI nor USR explain why track removal under rail banking would be inconsistent with their ambitious plans to restore the corridor for commuter or intercity rail service, since the right-of-way would be preserved to facilitate such an initiative, were the idea ever to gain traction. As such, the FTI concept is yet another hollow ploy to block interim trails use.

Finally, while contending that future passenger train revenues could contribute to the financial bottom line, USR relies upon a vague, and again unsubstantiated and uncorroborated, claim that excursion train operations have in the past generated “gross revenue of up to \$705,000 per year.”¹¹ USR does not show that passenger operations have in the past, or would in the future, generate consistent (or any) positive net income. All of this underscores a more troubling proposition that, while USR asserts that it could succeed financially upon reactivating the NITU Line – overlooked track rehabilitation and re-installation costs aside – it has not bothered to offer a *pro forma* business plan showing how USR’s proposal would be financially viable. USR’s proposal is a charade concealing an ulterior motive.

¹¹ Vacate/Reactivate Motion at 9 (citing SVS Mitchell, par. 8).

3. *The Owners are not interested in engaging in, or promoting, a financially-reckless rail service operation*

USR takes unfair liberties with the Owners' stance on service reactivation, resorting to unfair allegations that the Owners are anti-freight service. The Owners admittedly are not interested in restoring rail service, and they have thus far rejected the idea of reactivating the NITU Line to facilitate freight common carrier operations. But they have done so for valid reasons set forth in the preceding section of this Reply. More simply, as stated at Vacate/Reactivate Motion, page 9, "there is no need for freight service on the NITU Line."

The Owners understand that, if they are to enter into interim trails use arrangements, they must be responsive to proposals to restore the line in support of freight service need, and they are well aware of the regulatory ramifications of any decision that they might take that would thwart a genuine and proven case for a financially viable railroad operation on the NITU Line. But unless and until someone comes forward with a clear and persuasive case that freight rail service needs exist at traffic levels that would unmistakably support a financially viable rail service operation over the NITU Lines – which USR has failed to do – the Owners' decision to continue down the path of a recreation trail is entirely justified, and does not warrant the forced transfer of their reactivation right under the circumstances.

C. A preliminary injunction against track salvage is unwarranted

As the Board has already explained to the parties to this proceeding:

Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm. A party seeking a preliminary injunction must establish that (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be preliminarily enjoined, (2) it will suffer irreparable harm in the absence of a preliminary injunction, (3) other interested parties will not be substantially harmed by a preliminary injunction, and (4) the public interest supports granting the preliminary injunction. See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc. ("Holiday Tours"), 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C.

Cir. 1958); see also Union Pac. R.R.—Pet. for Declaratory Order & Preliminary Injunction, FD 36197, slip op. at 3 (STB served June 29, 2018); Richard Best Transfer, Inc. v. Union Pac. R.R., NOR 42149, slip op. at 4 (STB served Dec. 22, 2016). A preliminary injunction is an extraordinary remedy and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction. Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 4 (STB served May 4, 2012).¹²

USR has failed to satisfy any of the applicable standards, much less all of them.

The Board need not consider the merits of USR's latest injunction petition if the Vacate/Reactivate Motion is denied as premature or without merit. To borrow from the Board's December 21 Decision denying a previous USR injunction effort, "[USR]'s interest in the [NITU Line] is at this point speculative: only if the Owners had a common carrier obligation and refused to provide service could [USR] seek to acquire the Line."¹³ USR has failed once again to establish that it has a tangible interest in the NITU Line. The Owners have not violated any common carrier obligation, and, accordingly, USR's interest in the line segment is no less speculative now than it was in December of last year.

USR's latest injunction petition has all of the trappings of "déjà vu all over again." USR simply re-hashes, and seeks to re-litigate, a request for a preliminary injunction that it sought in June of 2018, and that the Board denied in its December 21 Decision. USR's argument here is the same as it was back in June of 2018, specifically: That USR will suffer irreparable harm in the absence of an injunction if the track and other rail assets along the NITU Line were to be removed, because track salvage would make the reinstitution of rail service cost-prohibitive, in USR's opinion. But, because USR's claim is to a particularly speculative business opportunity, there remains no irreparable harm to warrant an injunction. Moreover, the shipper

¹² December 21 Decision, slip op. at 6-7.

¹³ *Id.* at 7.

statements of interest are dubious, and so USR has provided no evidence that the presumed “business opportunity” would truly prove to be profitable at all.¹⁴ More likely than not, denying the injunction would protect USR from substantial loss.

But the “déjà vu all over again” hardly ends there. Rather, while USR attempts to present the circumstances here as sufficiently exceptional to warrant injunctive relief, they aren’t. In fact, USR has neglected to identify controlling Board precedent – Ballard Terminal-1¹⁵ – much less distinguish it from the facts here. Yet the Ballard Terminal proceeding is referred to repeatedly in the Board’s December 21 Decision. The facts of the two cases are unmistakably alike. In Ballard Terminal-1, Ballard Terminal Railroad Company, L.L.C. (“BTRC”) sought to acquire municipally-held reactivation rights over a rail-banked corridor that was the subject of an existing interim trails use agreement.¹⁶ BTRC presented essentially the same case for reactivation, although the record there reveals a comparatively more thorough and detailed effort by BTRC, compared to USR’s cursory evidence of need and operational viability. And, as in this case, when confronted with the near-term removal of the tracks within the corridor, BTRC rushed (first to a federal district court and then, later) to the Board to try to enjoin salvage.

Applying the usual four-part Holiday Tours standard, the Board considered BTRC’s injunction petition in Ballard Terminal-1, observing, in the process that BTRC had failed to –

¹⁴ USR relies exclusively on circumstantial evidence that suggests, without actual financial data and profit and loss statements, that there are other railroads with similar scopes of operation that make do with some 3,800 carloads per year. The financial bona fides of USR’s proposal should be made with case-specific data, not by some awkward analogy.

¹⁵ Ballard Terminal R.R. – Acquis. & Operation Exemption – Woodinville Subdivision, FD 35731 et al. (STB served Aug. 1, 2013) (“Ballard Terminal-1”).

¹⁶ Here, by comparison, the NITU Line is not yet the subject of any interim trails use agreements, although it is possible that such agreements may be executed in the near future.

- present credible evidence of access to adequate funding;¹⁷
- show sufficient demand for service (including shipper traffic commitments) from ready, willing and able shippers to support a conclusion that rail service was needed;¹⁸
- establish that the existing track on the subject line, which had not carried traffic since 2006,¹⁹ was in adequate shape for freight rail service in its current state;²⁰ and
- present a concrete, realistic proposal to provide freight rail service on the Line.²¹

Additionally, the Board in Ballard Terminal-1 noted that the involved municipalities would be harmed by the injunction, because such Board action would result in delay to interim trails arrangements to which the public entities had committed substantial resources.²² After addressing BTRC's many evidentiary shortcomings, the Board denied the injunction petition under a robust Holiday Tours analysis.

It is surprising to find that USR has spent no time in its legal analysis explaining why its attempt to enjoin track removal in the context of an NITU here should succeed where, in facts so remarkably similar, BTRC's had so decisively failed. In fact, USR's injunction request fails the Holiday Tours standards for all of the same reasons as in Ballard Terminal-1. First, as addressed in the foregoing discussion, USR has not made a persuasive case for vacating the challenged NITUs, and, similarly, it has not justified the forced transfer of the Owners' as-yet-

¹⁷ Ballard Terminal-1, slip op. at 5.

¹⁸ Id.

¹⁹ Here, although freight last operated over the portions of the Nickel Plate Line until around 2003, passenger train operations South of Noblesville ceased in 2015, along with track maintenance.

²⁰ Id. at 6.

²¹ Id. at 7.

²² Id. at 6.

nonexistent reactivation right (since no interim trails use agreements have been completed). As such, USR has not demonstrated a likelihood that it will prevail on the merits.

Second, USR's claim to the reactivation right is highly speculative, and any such asserted claim may be less than worthless, given the absence of reliable traffic commitments from allegedly "interested" shippers. Accordingly, USR's claim of irreparable harm is unconvincing in keeping with the December 21 Decision and Ballard Terminal-1.

Third, an injunction will merely delay the delivery of a sought-after recreational amenity that can best be delivered under interim trails use arrangements with interested municipalities. Such delay lends to increased costs to the communities and their taxpayers. Simply, the Owners and the individual municipalities seeking to implement trails use over a long-moribund line with no demonstrated current, viable demand for rail service would all be harmed by an injunction.

Finally, the requested injunction pits longstanding and specific efforts to deliver a benefit to the public against vaguely-articulated, dubious claims that restoration of the NITU Line might benefit a few industries, and do so profitably. As in Ballard Terminal-1, the Board should find that the public interest supports denial of the injunction.

CONCLUSION

As shown above, the Vacate/Reactivate Motion is untimely and meritless. Similarly, the Injunction Motion fails to satisfy any of the Holiday Tours criteria, much less all four, and the relief runs counter to precedent set forth in the December 21 Decision and in Ballard Terminal-1. For these reasons each of the Motions should be denied.

Respectfully submitted,

By: R. A. Wimbish

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**ATTORNEY FOR CITY OF FISHERS, CITY
OF NOBLESVILLE, AND HAMILTON
COUNTY, INDIANA**

Dated: April 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of April, 2019, a copy of the foregoing **Consolidated Reply in Opposition to the Motion for to Vacate NITUs and to Reactivate Rail Service, and to the Verified Motion for Preliminary Injunction Pursuant to 49 U.S.C. § 1321(b)(4)** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery, upon all parties of record.


Robert A. Wimbish

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

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EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36137

**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
– PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

STB Docket No. AB-290 (Sub-No. 117X)

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BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

**REPLY IN OPPOSITON TO MOTION FOR LEAVE TO
FILE REBUTTAL, AND RESPONSE TO REBUTTAL**

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Dated: July 13, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36137

**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
-- PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

STB Docket No. AB-290 (Sub-No. 117X)

**NORFOLK AND WESTERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

**REPLY IN OPPOSITON TO MOTION FOR LEAVE TO
FILE REBUTTAL, AND RESPONSE TO REBUTTAL**

The Cities of Fishers ("Fishers") and Noblesville, Indiana, and Hamilton County, Indiana, collectively as the "Owners," and Fishers in its individual capacity as proposed trails sponsor, hereby respond in opposition to the Motion for Leave to File Rebuttal (the "Motion") of US Rail Holdings, LLC ("USR"). If the Rebuttal is accepted over the Owners' objections, then the Owners hereby offer a Response. As is discussed below, USR's Rebuttal should be stricken as unnecessary and prejudicial in that USR seeks through it to have an opportunity to advance new arguments and legal theories in support of its efforts to accomplish the forced divestiture of the Nickel Plate Line by order of the Surface Transportation Board ("Board"). But if the Board elects to accept the Rebuttal, then, in light of the additional arguments and theories advanced

exceptional circumstances, a 27-year extension is beyond the pale²² and the Board should put an end to USR's nonsensical OFA aspirations.

5. USR's asserted last-ditch plan to take the Nickel Plate Line via forced transfer of the Owners' reactivation right once trails use commences is not ripe for consideration here, and is a dubious proposition in any case.

USR contends that it should be permitted to purchase the line via FLA or OFA process, because USR will acquire line ultimately, even if in the course of trails use. According to USR, if all else fails, then, in USR's eyes, it must be able to purchase the line by wresting the Owners' reactivation right from them. It notes, however, that to succeed in its efforts, the Board must prohibit the Owners from undertaking track salvage in the interim.²³

The first problem with USR's argument is that there is no NITU as yet in place, though a request for issuance of an NITU is pending. As such, the issue of reactivation rights is unripe for Board consideration. Second, USR has not presented, and would be unable to present, a case for economically viable freight service to support a forced taking of the Owners' reactivation right. And third, if the Board agrees that the Owners are, and will remain, exempt from the agency's FLA provisions, and that USR's efforts at an OFA are over a quarter-century

a municipality, not to be financially responsible (although it does not appear that this discussion is located at page 5 of that decision, as USR suggests). The second – Norfolk Southern Railway Company – Abandonment Exemption – Between Red Bay & Haleyville, AL in Franklin, Marion & Winston Counties, AL – in the Matter of a Request to Set Terms and Conditions, Docket No. AB-290 (Sub-No. 123X) (ICC served Sep. 23, 1993) – involved a 60-day extension of time in the course of a timely-filed OFA to permit the parties to better develop rail line valuation evidence needed for the Interstate Commerce Commission to reach a decision on compensation terms.

²² USR's grasping drives it to the starkest of illogic, suggesting that Board-authorized trails use is invalid should anyone, at any time (apparently), seek to acquire the line via OFA. Rebuttal at 5 (asserting a "predicament" where an offeror seeks to disrupt a trails use arrangement 27 years after an OFA could have been accepted).

²³ Rebuttal at 11.

too late, it is unlikely that the Board would sanction a taking as an outgrowth of interim trails use, given the non-carrier status of the Owners who would hold the reactivation right.

Should USR be denied its line purchase aspirations via FLA and OFA, and should USR nevertheless press for a line sale via interim trails use processes later on, the Owners state in advance of any such development that they will object to USR's continuing efforts at a taking. And if the Owners find that the Board may be amenable to sanctioning the forced sale of the line under interim trails use, then the Owners would have to consider whether to simply effectuate abandonment of the line now, as they are entitled to do, and then go about preserving the corridor through applicable state law processes instead. In short, should USR press the issue in the course of interim trails use, its self-assuredness that Board processes ultimately will result in the sale of the line to it is misplaced – such effort could instead result in outright abandonment.

USR's envisions a forced sale, and not merely the transfer of a reactivation right – a USR legal leap of faith. USR seems unable to grasp the crucial distinction between transfer of the reactivation right and transfer of ownership. Under USR's trails use idea, the Board first would have to agree as a threshold matter that the Owners could be subject to a forced transfer of its reactivation rights, and, if so, then determine whether circumstances support a forced transfer that reactivation right. But it is not clear, if USR were to be awarded a reactivation right, that the Owners would be forced to sell the line. Instead, the Owners may be entitled to retain ownership, holding the right to negotiate terms and conditions for the restoration of rail service under a USR operating regime. Applicable precedent concerning reactivation rights does not establish what form a third-party reactivation would take, and whether it could entail railroad asset divestiture as

USR has conceived of it or something less than that. The only such efforts at an adverse taking of reactivation rights have failed.²⁴

Once again, it is becomes apparent that a line sale is essential to USR's concealed objective of delivering a last-second win for rail excursion proponents. If USR were to be awarded a right to operate the line (short of ownership, which would continue to reside in the Owners), then USR and its passenger excursion allies know that the Owners are unlikely to permit passenger train operations. As such, the focus of USR's efforts belie the fact that it seeks the Nickel Plate Line not for common carrier service purposes, which it arguably might be able to accomplish short of the extreme relief of a forced sale, but rather to accomplish for excursion train proponents what they have been after from the outset.

CONCLUSION

USR's Rebuttal is unwarranted, introduces new arguments and legal theories, and, accordingly, should be rejected. If it is not rejected, then the Board must "clarify" that there is no path for the forced taking of the Owner's railroad line. To begin with, the owners are non-carriers who are not subject to any of the forced divestiture maneuvers that USR is advocating, and, even assuming for the sake of argument that the Board were to revoke the Owners' non-carrier status and subject the Owners to regulation despite the unmistakable de-regulatory assurances of Common Carrier Status, USR would not be guaranteed the sale of the line. It is rather apparent, despite USR's efforts to conceal it, that USR's forced line sale proposal is not driven by valid interstate commerce considerations, but is instead motivated by excursion train interests with which it has been allied. For all of these reasons, the Board must make clear that,

²⁴ Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision, Docket No. FD 35731, et al. (STB served Dec. 30, 2014); GNP Railway, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision, Docket No. FD 35407, et al. (STB served Jun. 15, 2011).

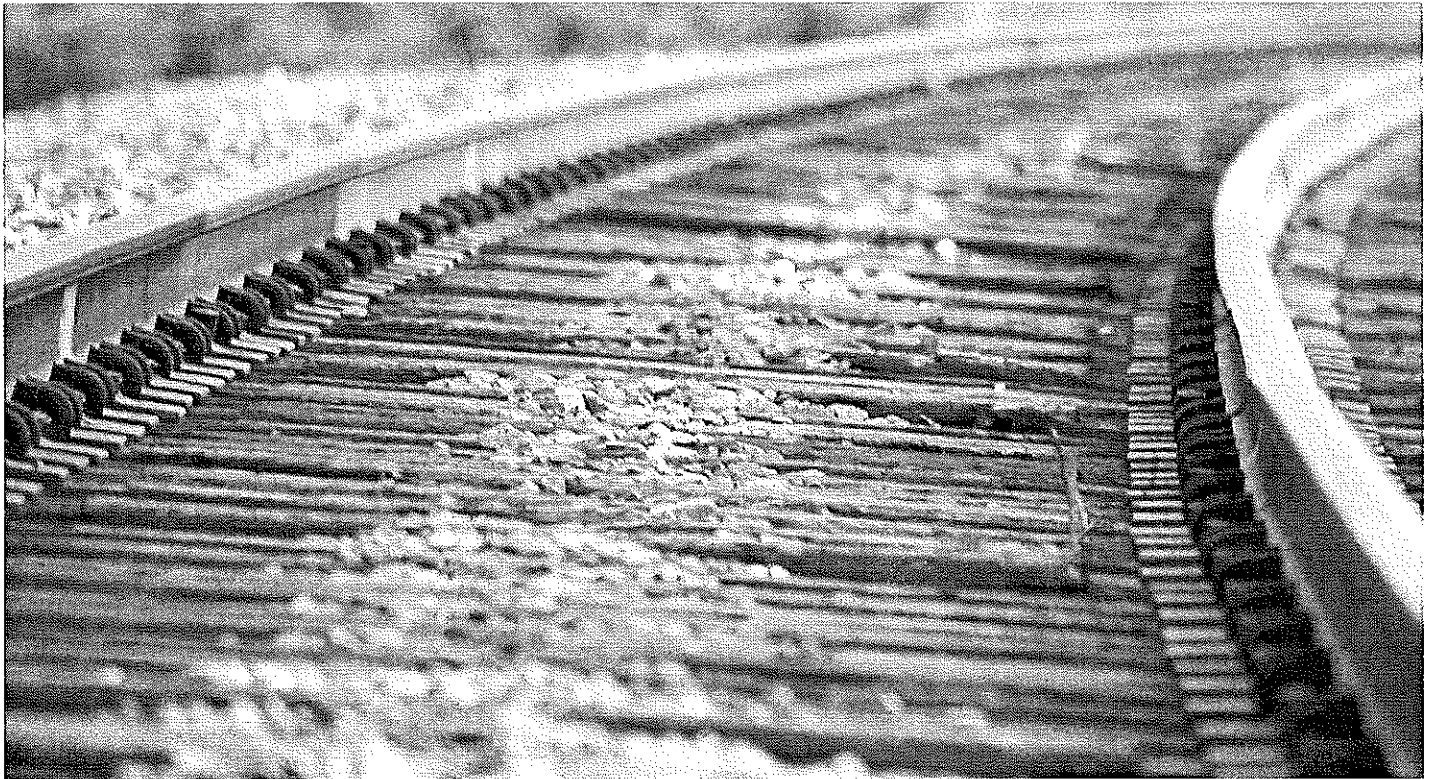
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

**NORFOLK AND WESTERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

**CONSOLIDATED REPLY IN OPPOSITON TO THE MOTION TO VACATE NITUS
AND TO REACTIVATE RAIL SERVICE, AND TO THE VERIFIED MOTION FOR
PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)**

EXHIBIT B



**NET LIQUIDATION VALUATION
OF THE
FISHERS, IN-OWNED TRACK ASSETS**

Prepared for:
THE CITY OF FISHERS, IN

Prepared by:
R.L. BANKS & ASSOCIATES, INC.

JULY 18, 2018



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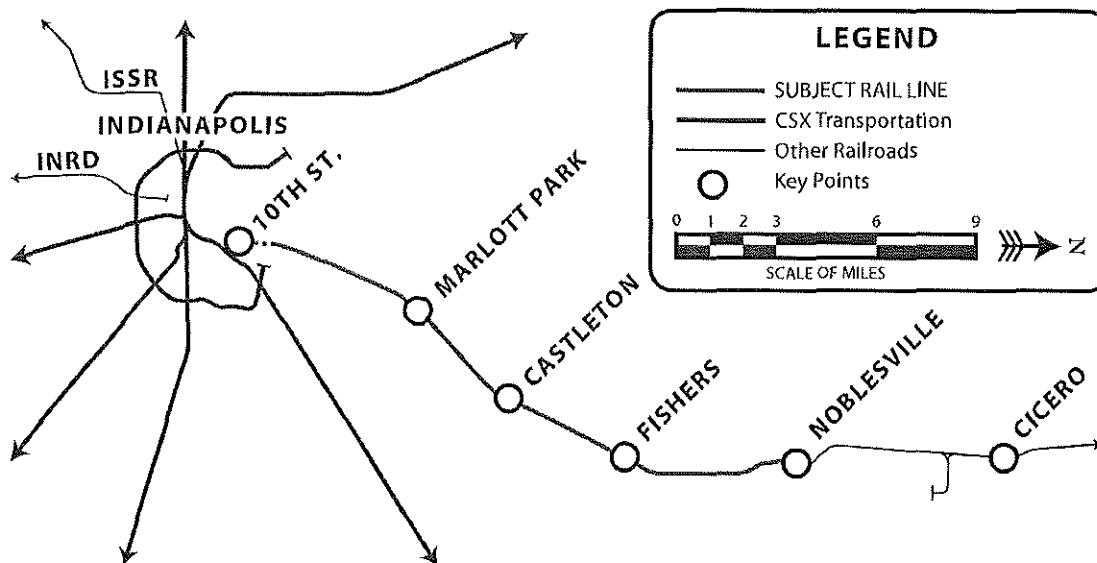
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Introduction

The City of Fishers, IN (the City) owns an approximately 22-mile out-of-service rail line extending between 10th Street in Indianapolis, IN and Noblesville, IN. The City retained R.L. Banks & Associates, Inc. (RLBA) to perform a valuation of track assets along the entire corridor, including 20 mainline miles and 22 total miles of track. An overview of the property inspected can be seen in Map One below:

**MAP ONE:
FISHERS, IN-OWNED RAIL ASSETS**



This effort determines the Net Liquidation Value (NLV) of track assets in the subject property as of July 18, 2018 based on findings recorded during a physical inspection of the assets which occurred on July 3, 2018 conducted by Lee Meadows, P.E., RLBA's Director, Transportation Engineering. This report presents findings of the research and discusses the factors which influence the value of railroad rail, other track material (OTM), ties and ballast.

Net Liquidation Value

As summarized on the next page in Table 1 and seen in greater detail on Appendix One, the NLV of the City's track assets is \$1,620,000 as of July 18, 2018. That figure was determined via desktop application of current market prices to the physical inventory inspected. A summary of the material evaluated appears in Appendices Two through Six addressing each respective segment, which identify key rail asset characteristics by milepost location.

RLBA arrived at this NLV as a result of four, principal steps: first, computation of Gross Liquidation Value (GLV), the market value of salvageable assets (primary components with a value greater than related salvage expenses); second, calculation of various liquidation expenses; third, Track Salvage Value (TSV), that value remaining after deductions of Liquidation Expenses due to removal and restoration as necessary to

**TABLE 1:
NET LIQUIDATION VALUATION SUMMARY**

Item	Value
Gross Value	\$2,307,700
Preparation Cost Adjustments	(\$275,500)
Restoration Cost Adjustments	(\$197,700)
Track Salvage Value	\$1,834,500
Other Expenses	(\$214,800)
Net Liquidation Value	\$1,620,000

render assets saleable and preparation of the corridor for non-rail use and fourth, Net Liquidation Value (NLV), that value remaining after deductions of administration/marketing expense and conduct of the sales process such as transportation of materials.

Methodology to Compute NLV

NLV was determined utilizing exactly the same process RLBA always employs in its previous valuations, through application of a multiple step process, the building blocks of which are summarized below:

1. Gross Liquidation Value
 - a) Fixed Asset Ownership
 - b) Fixed Asset Inventory
 - c) Inventory Adjustment for Wear and Recovery Reductions and
 - d) Application of Market Value Unit Prices
2. Liquidation Expenses
 - a) Removal Expenses and
 - b) Restoration Expenses
3. Track Salvage Value
4. Administrative, Marketing and Transportation Expenses and
5. Net Liquidation Value.

That approach, by design, adheres to the methodology employed by the Surface Transportation Board (STB), as manifest in decisions made by its Commissioners involving abandonments and other, related issues involving the prescribed use of NLV.

Gross Liquidation Value

GLV in the context of this analysis was defined as current retail market value (with the exception of ties, which would be wholesaled) of all fixed assets as if they were available for immediate sale.

Signals and communications facilities, highway crossing signals, bridges, culverts or ballast, as will be explained later, yield no positive NLV value because of high removal costs.

Fixed Asset Ownership

In performing this track-related NLV evaluation, RLBA assumed that the City owns all the rail assets in fee simple including all yard, siding and industry spur tracks.

Fixed Asset Inventory

To assess the physical condition of the track assets, the valuation was based on field inspections. Data concerning track condition and inventory obtained during that field inspection was used to inform the development of this NLV report.

Steel

The most significant marketable materials reflected in this valuation were steel track components, assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition. Generally, rail in the main track designated as "fit" or "relay" can be reused in other railroad applications, if it weighs at least 85 pounds per yard or greater. Rail may have a functional use and life with wear up to and exceeding ½ inch vertical or horizontal head wear but is not generally considered worth installing again into a relay, (cascading) position if it exhibits more than 1/4 inch wear. At the time of this valuation it was found that the City's rail assets were suitable only as scrap. Scrap is divided into two categories: rail and other track material (OTM) such as joint bars, tie plates, rail anchors, nuts, bolts, washers and spikes.

Other Track Material

All tie plates found on the line were single shoulder and were scrapped due to low market demand. Generally, if rail reuse as relay is warranted, joint bars are assumed reused whereas if rail is assumed scrapped or rerolled, joint bars are assumed to be scrapped. In this case, all joint bars on the line were valued as scrap. All other track material (OTM) such as nuts, bolts, washers and spikes were also valued as scrap.

Turnouts

Turnout values are typically determined through two characteristics: rail weight and frog size. Turnouts are classified as either "heavy" or "light," with heavy turnouts having a rail weight of greater than or equal to 112 pounds per yard and light turnouts having a rail weight of less than 112 pounds per yard. The vast majority of switches on the line were found to be size 7, 10 or 11 turnouts with spring, rigid, rail-bound manganese (RBM) frogs. One turnout on the line was found to be in good enough condition to be considered as relay. The unit prices only reflect the material, not the cost of installation.

Ties

Because tie installation costs often approach tie material costs, only recently installed ties are suitable for rail reuse. The cost to sort, handle, transport and inventory ties is high, and in comparison with the wholesale prices they command, generally yield only a low net salvage value. Overall tie condition on the inspected track was poor, with only 11 percent of ties in good enough condition to be considered as relay.

Other Track Assets

No net salvage value was assigned to signals and communications facilities, highway crossing signals, bridges, culverts or ballast on the line in the calculation of the NLV. Reuse of signals by even a short line railroad is unlikely; typically, no inventory is kept on-hand and new replacements are ordered from standard suppliers and immediately installed. Marketing costs to inform railroads of second-hand availability and handling costs likely would exceed the amount that could be recovered through sale. Signal material

scrap value would not exceed salvage costs. Likewise, there is no ready market in which to sell used, high-way crossing signals and so they are not included in NLV calculations. Bridge, culvert and ballast removal costs and proceeds traditionally approximate each other, typically have no net effect on NLV and so are omitted from NLV calculations.

Inventory Adjustment Reflection of Wear and Recovery Reductions

Due to material age, condition and the economics of expedited removal procedures, RLBA determined that not all railroad assets in the existing right-of-way would be recovered. RLBA typically assumes the liquidation of all rail lines to yield the following recovery rates, based on the theoretical weight of new rail:

- 97 percent of scrap and reroll rail;
- 95 percent of tie plates on scrapped rail;
- 95 percent of joint bars on scrapped rail;
- 97 percent of turnout material;
- 80 percent of fit rail anchors and
- 80 percent of rail anchors, bolts, spikes, washers and other scrap materials.

The recovery rate assumption applied to reroll and scrap rail reflects a three percent reduction applied to gross rail weight as an adjustment recognizing average rail wear. Five percent of scrap OTM gross weight was judged likely to be lost as a result of the removal process. In addition, twenty percent of anchors, bolts, spikes, washers and other materials were estimated as rusted or lost during salvage operations, leaving only eighty percent to be salvaged as scrap.

Application of Market Value Unit Prices

The GLV and NLV estimates were based on the application of actual unit market prices as of July 18, 2018, as supplied by active market participants whom confidentially current pricing information to RLBA. The market prices applied to this NLV can be found on Appendix Seven.

RLBA determined that reroll rail and railroad scrap loaded in railcars in the Indianapolis area and delivered to the Chicago area would command larger net value based on metal prices and rail transportation costs. A summary of shipment volumes can be found on Appendix Eight.

Liquidation Expenses

Two fundamental assumptions were employed in development of expenses that were netted against gross liquidation values:

- 1) costs associated with removal, sorting and transporting railroad materials reflected a deliberate and efficient liquidation and
- 2) restoration expenses were assumed to be required in connection with highways, including coordination with local governments.

Removal Expenses

The cost of taking up track, including disassembly, sorting, stacking and loading of materials for shipment and disposing of ties was estimated at \$16,000 per mile where rail was classified as relay and \$12,000 per mile where classified as scrap. Turnout removal was estimated at \$800 per fit turnout and \$500 per scrap turnout.

All tracks in roadways and crossing protection devices must be removed and pavement restored as a condition of service termination. The removal of track materials from pavement and restoration of pavement was estimated at \$2,000 per improved crossing and \$300 per unimproved crossing. It is important to note that the number of crossings listed in Appendix One may not match the actual number of crossings on the line as RLBA assumes a length of 40 feet for each crossing for its removal and restoration cost estimations. Removal of crossing protection devices was estimated to equate to salvage value.

RLBA assumed that the cost to remove bridge superstructures would approximate salvage proceeds, resulting in no impact on NLV. While removal expense likely could exceed salvage proceeds, because some trestles are constructed of timber and may be in environmentally sensitive areas, it is not unusual for bridges and culverts to be left in place in the event a line is converted to a trail. Such a disposition would yield the same NLV as that assumed in the estimate. Supporting and sub-structures are assumed to be allowed to remain in place, thereby generating neither proceeds nor expenses.

Restoration Expenses

As a condition of service termination and non-rail reuse of the real property, governments frequently require correction of some existing conditions that might cause the public sector to incur future expense. Such regulations affect the subject NLV determination in three principal asset categories: 1) bridges and culverts, 2) grade crossings and 3) structures.

Track Salvage Value

Track salvage value is equal to gross liquidation value less liquidation expense.

Administrative, Marketing and Transportation Expenses

RLBA's standard methodology to determine cost to administer liquidation and market steel assets so as to achieve retail prices arrived at an estimation of fifteen percent of retail GLV (excluding transportation) regarding relay steel materials and five percent of GLV re scrap, reroll and non-steel materials. This methodology assumes liquidation is either performed by the railroad itself, which presumably has limited liquidation experience, or by a hired, third party at a premium. Transportation of reroll and scrap steel materials was assumed to be shipped by rail to Chicago to maximize income with carload transportation costs reflecting same.

Net Liquidation Value

NLV is the remainder after liquidation expenses were deducted from GLV. This is a reasonable expectation of what a seller (acting as its own broker) could receive were the line liquidated in July 2018.

Railroad Rail Market

The predominant component of railroad track asset value is the rail itself. The rail market consists of four primary products: new rail and the three, previously described grades of used rail: relay, reroll and scrap. Since the City's line is entirely comprised of second-hand rail, the discussion which follows is limited to the used rail markets. The NLV depends not only on the wear experienced on the subject rail but also on the situation in those markets.

Relay Rail

Rail replaced because of wear or defects on a busy or fast main track is eminently suitable to install on slower speed or lighter traffic lines. At the slow speeds operated in yards, few broken rails result in derailments. In turn, welded replacement rail installed on secondary lines is superior to older rail still in use in some yards. Relay rail tonnages installed consistently exceed new rail tonnages because rail removed from a main line and installed on a branch line frequently generates an additional rail cascade to yard tracks. At each step, however, a portion of the rail is scrapped, usually resulting in short lengths of rail (from cuts made at road crossings and switches) or rail with excessive curve wear.

Through the cascading process, relay rail is generated by installing new rail (or other relay rail). In addition, some liquidated rail lines generate relay rail, though abandonment rail is frequently light, worn sections which are scrapped. While most relay material generated by a railroad is used on its own lines, there is a very active commercial relay market; several brokers supply material to regional and short line railroads and shipper-owned spurs, which neither require nor can justify the cost of new rail.

At lower levels of remaining useful life, rail becomes unattractive to sell in the relay market because the expenses of marketing, transportation and installation of rail on a regional or short line railroad would constitute an excessive share of total value.

Most rail relay programs include welding the rail before installation. Welding significantly reduces maintenance expenses incurred in the joint area associated with surfacing and bolt tightening. In addition, by removing the location of greatest rail wear, rail life is extended.

Reroll and Scrap Rail

Rail is a premium scrap grade because it is hard steel with known chemistry. While the scrap steel market includes many grades, used rail enters the scrap market as reroll or as charging material (heavy melting scrap) to be melted in furnaces and made into other steel products. Reroll is the designation attached to clean lengths of rail that can be rerolled into new products (construction rebar, fence posts, etc.). Scrap material is required in charging both integrated mills and in mini-mill electric furnaces. The mini-mill

demand for scrap is expected to remain strong. While most mills will accommodate rails up to five feet in length, some buyers prefer shorter lengths of two or three feet.

User Categories

The primary categories of rail users are Class I (large), regional, short line railroads and industrial plants with rail sidings and/or yards. Class I railroads primarily purchase new rail and generate relay rail internally with light weight rail sold as scrap.

Use of relay rail by weight depends on specific railroad practice but, in general, on Class I (major) railroads, 112 pounds per yard and heavier will be reinstalled on secondary main lines if within wear limits, otherwise it will be installed in yard tracks. Good relay rail is required in yard turnouts. Rail between 100 and 112 pounds per yard is suitable in yard and industry tracks, though if generated in abundance in any one year, it may be sold into the second-hand market. Rail sections less than 100 pounds per yard are generally scrapped when taken up by Class I railroads.

Regional railroads are in need of second-hand rail and demand for repair rail has propelled second-hand prices on medium and heavy rail to a high value proportionate to prices of new rail with respect to remaining life as indicated by rail wear. This anomaly results because at typical regional railroad annual traffic levels of three to five million gross tons (MGT), half-worn rail may last another 50 - 80 years and so is a relative bargain compared with new rail.

From the distinct economic perspective of regional railroads, by contrast with Class I railroads, paying one-half to three-quarters the price of new rail for half-worn rail can provide savings because replacement expenditures are years away. Rail weighing 115 pounds per yard or greater is preferred for replacement. Rail designated 132RE or greater (RE designation representing rail that adheres to AREMA specifications) would be considered if the costs, including shipping and other track materials, were the same or less than a 115RE section of rail. Similar economics drive the decision of Class I railroads to cascade worn rail, with little in-place economic life to another line on the system with lower traffic density rather than continuing to wear the rail down to scrap condition at its original location.

Short line railroads use any rail from new 136RE to second-hand 85 pounds per yard rail, depending on traffic volume and financial strength. Generally, 100 pounds per yard rail or heavier is preferred but some lines still install less than 100-pound rail (to replace even lighter weight installments). If predominant traffic is carried in 100 ton cars, 100 pounds per yard is a minimum standard although some western railroads in dryer climates, and hence better subgrade conditions, use 90 pounds per yard section. (The demand for relay quality 90 and 100 pounds per yard rail is still there but appears to be more regionalized, resulting in decreasing value due to the shift of the railroad industry toward being able to handle even greater axle loads.) Only a few short lines, generally those owned by the primary company they serve, can finance new rail purchases.

Industrial users can use any weight rail but prefer 100 pounds per yard or heavier section. A nearly universal specification by civil engineering firms of 115RE rail (instead of 115RE or heavier) on new sidetrack construction has driven the relay price per ton of that rail section higher than most other sections. The high volume of 115RE rail installed in mainline tracks during the 1950's and 1960's followed by a shift to heavier 119, 132 and 136RE rail has led to a scarcity of available 115RE repair rail. During the last few

years, the relative bargain of 119 and 132RE rail has been recognized and those prices also have risen to match that of 115RE at least on a lineal foot basis.

Qualifications to Estimate

The findings of this cost estimate are subject to several qualifications and limiting conditions which are stated as follows:

It is assumed that all rail valued was manufactured according to AREMA and ASCE recommended practices and that the rail assets are in full compliance with all FRA standards;

Further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws;

RLBA takes no responsibility for changes in market conditions which may occur after the date of valuation or for the inability of the rail owner to identify a qualified purchaser;

With regards to the valuation, RLBA has not conducted any title search or verification of legal ownership. RLBA has conducted this valuation under the assumption that the entire rail described herein is owned by the City free and clear of any liens and encumbrances;

No employee or representative of RLBA will be required to give testimony or attend court or appear at any governmental hearing with reference to the subject rail material, unless prior arrangements have been made directly with RLBA;

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection or areas not inspected;

RLBA has not conducted any environmental remediation investigation and as such has not factored in any environmental remediation costs that may result from actual liquidation of line.

Certification

I, Lee Meadows, Jr., P.E., do hereby certify that to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.

I have no specified or unspecified present or prospective interest in the properties that are the subject of this report and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

I made a personal inspection of the property that is the subject of this report on July 3, 2018.

Submitted,



Lee Meadows, Jr., P.E.



NET LIQUIDATION VALUATION OF THE FISHERS, IN-OWNED TRACK ASSETS

APPENDICES

JULY 18, 2018

Appendix One

Net Liquidation Value of Track Assets

Fishers, IN-Owned Rail Assets

Milepost 2.95 to Mile Post 23.26

3-Jul-18

	Unit	Unit Cost	Total	Grand Total
Track Nominal Value:				
Relay Railroad Materials			\$5,800	
Steel Scrap and Reroll OTM			\$1,936,900	
Ties and Non-steel OTM			\$365,000	
Gross Value				\$2,307,700
Preparation Cost Adjustments:				
Fit Rail & OTM Removal (miles)	0	\$16,000	\$0	
Scrap/Reroll Rail & OTM Removal (miles)	22	\$12,000	-\$268,700	
Fit Turnout Removal (each)	1	\$800	-\$800	
Scrap Turnout Removal (each)	12	\$500	-\$6,000	
Total Adjustments				-\$275,500
Restoration Cost Adjustments:				
Crossing with Improvements (each)	96	\$2,000	-\$192,000	
Unimproved Crossing (each)	19	\$300	-\$5,700	
Total Adjustments				-\$197,700
Track Salvage Value				\$1,834,500
Administrative, Marketing and Transportation Expense				
Relay Steel Materials - 15 percent			\$900	
Scrap, Reroll and Non-steel Materials - 5 percent			\$115,100	
Transportation - Carloads to Chicago	61	@	\$1,619	\$98,800
Total Estimated Expense				\$214,800
Net Liquidation Value				\$1,620,000

Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth. Values may not appear to add due to rounding.

Appendix Two

Gross Liquidation Value of Track Assets
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18

Rail:								Re-Useable		Scrap and Reroll			Grand Total
Miles		Description	Condition	Unit	Quantity per mile	Total	Unit Value	Value (a)	Unit Value	Value (b)			
Fit	Scrap										%	%	
	21.68	90	RA	Scrap	Ton	158.4				97 %	\$319.55	\$1,064,400	\$1,064,400
	0.71	80	Assorted	Scrap	Ton	140.8				97 %	\$319.55	\$31,000	\$31,000
0.00	22.39	Rail Total							\$0			\$1,095,400	\$1,095,400
Other Track Material:								Re-Useable		Scrap			Grand Total
Miles		Description	Condition	Unit	Quantity per mile	Total	Unit Value	Value (a)	Unit Value	Value (b)			
Fit	Scrap										%	%	
	21.68	Tie Plates 7 x 10 SS	Scrap	Ton	106.2	2,302				95 %	\$319.55	\$698,900	\$698,900
	0.71	Tie Plates 6 x 8 SS	Scrap	Ton	106.2	75				95 %	\$319.55	\$22,900	\$22,900
	21.68	Jt. Bars 90#	Scrap	Ton	9.5	207				95 %	\$319.55	\$62,700	\$62,700
	0.71	Jt. Bars 80#	Scrap	Ton	6.9	5				95 %	\$319.55	\$1,500	\$1,500
	22.39	Spikes	Scrap	Ton	5.1	113				80 %	\$319.55	\$29,000	\$29,000
	22.39	Bolts & Washers	Scrap	Ton	1.4	32				80 %	\$319.55	\$8,100	\$8,100
Other Track Material Total									\$0			\$823,100	\$823,100
Turnouts:								Re-Useable		Scrap			Grand Total
Turnouts		Weight	Frog Size	Condition	Unit	Quantity per Turnout	Total	Unit Value	Value (a)	Unit Value	Value (b)		
Fit	Scrap											%	
	1	Heavy	11	Relay	Each		1	97 %	\$6,000.00	\$5,800		\$5,800	
	3	Light	7	Scrap	Ton	5	15				97 %	\$319.55	\$4,600
	1	Light	9	Scrap	Ton	5	5				97 %	\$319.55	\$1,500
	3	Light	10	Scrap	Ton	5	15				97 %	\$319.55	\$4,600
	5	Light	11	Scrap	Ton	5	25				97 %	\$319.55	\$7,700
1	12	Turnouts Total							\$5,800			\$18,400	\$24,200
Steel OTM Total									\$5,800			\$841,500	\$847,300

Appendix Two

Gross Liquidation Value of Track Assets
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18

Non-steel Material:								Re-Useable		Scrap		Grand Total (a+b)
Miles		Description	Condition	Unit	Quantity per mile	Total	%	Unit	Value	Unit	Value	
Fit	Scrap							Value	(a)	Value	(b)	
22.39		Ties	Relay	Each	3,168	70,932	11 %	\$20.00	\$158,100			\$158,100
22.39		Ties	Landscape	Relay	Each	3,168	66 %	\$8.00	\$372,100			\$372,100
	22.39	Ties	Scrap	Scrap	Each	3,168				23 %	-\$10.00	-\$165,200
Non-steel OTM Total									\$530,200		-\$165,200	\$365,000
Grand Total									\$536,000		\$1,772,000	\$2,308,000

Notes: Dollar amounts are rounded to the nearest hundred; tons to the nearest tenth; units to the nearest integer. Values may not appear to add due to roundin;
Source: Vendors, and RLBA estimates.



Appendix Three

Summary of Rail Evaluated
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18

Main Track:

Milepost		Rail				Miles
<u>South</u>	<u>North</u>	<u>Section</u>	<u>Rolled</u>	<u>Type</u>	<u>Control Cooled</u>	
2.95	23.26	90	1920	Jointed	No	20.31
Main Track Total						20.31

Yard Tracks and Sidings:

Milepost		Rail				Miles
<u>South</u>	<u>North</u>	<u>Section</u>	<u>Rolled</u>	<u>Type</u>	<u>Control Cooled</u>	
4.22	4.51	90	1920	Jointed	No	0.29
15.73	16.30	90	1920	Jointed	No	0.57
21.28	21.99	80	1928	Jointed	No	0.71
22.75	23.26	90	1920	Jointed	No	0.51
Yard Track & Siding Total						2.08

Track Miles Grand Total **22.39**

Source: RLBA On-site Inspection

Appendix Four

Summary of Turnouts Fishers, IN-Owned Rail Assets Milepost 2.95 to Mile Post 23.26 3-Jul-18

Location	Rail	Frog			Condition		Switch Points			Switch Stand	
MP	Weight	Type	Size (#)	Weight	Relay	Scrap	LH	RH	Lead	Manual	Power
4.22	90	RBM	11	90		X	X			X	
4.51	90	RBM	10	90		X		X		X	
5.79	90	RBM	9	90		X	X			X	
5.80	90	RBM	7	90		X	X			X	
5.80	90	RBM	7	90		X	X			X	
6.86	90	RBM	11	90		X		X		X	
11.99	90	RBM	11	90		X		X		X	
13.58	90	RBM	7	90		X		X		X	
15.73	90	RIGID	10	90		X		X		X	
16.30	90	RBM	10	90		X	X			X	
19.45	115	RBM	11	115	X		X			X	
21.69	90	RBM	11	90		X		X		X	
21.72	90	RBM	11	90		X		X		X	
Sub Total											
	Heavy		11		1	0					
	Light		7		0	3					
	Light		9		0	1					
	Light		10		0	3					
	Light		11		0	5					
Grand Total					1	12					

Note: "Heavy" turnouts are classified as having a rail weight of greater than or equal to 112 pounds per yard, while "Light" turnouts have a rail weight of less than or equal to 110 pounds per yard.

Source: RLBA On-site Inspection

Appendix Five

Summary of Tie Condition
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18
(Sample Blocks of 100)

Location	Condition		
<u>MP</u>	<u>Relay</u>	<u>Landscape</u>	<u>Scrap</u>
3	5	52	43
7	7	59	34
12	14	64	22
15	16	62	22
17	6	73	21
21	26	74	0
22	4	75	21
Average Total (%)	11	66	23
With tie spacing of	20	inches	
Inches on center equates to :	3,168	ties per mile	
Estimated average of	353	Relay ties per mile	
	2,077	Landscape ties per mile	
	738	Scrap ties per mile	
Notes: Units are rounded to the nearest integer.			
Source: RLBA On-site Inspection			

Appendix Six

Summary of Rail Class By Mileage
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18

Main Line Miles

Location					Condition/Type of Rail (%)									
	<u>MP</u>	<u>MP</u>	<u>Miles</u>	<u>Weight</u>	<u>CWR</u> <u>Fit #1</u>	<u>CWR</u> <u>Fit #2</u>	<u>CWR</u> <u>Fit #3</u>	<u>Jointed</u> <u>Fit #1</u>	<u>Jointed</u> <u>Fit #2</u>	<u>Jointed</u> <u>Fit #3</u>	<u>CWR</u> <u>Reroll</u>	<u>CWR</u> <u>Scrap</u>	<u>Jointed</u> <u>Reroll</u>	<u>Jointed</u> <u>Scrap</u>
90	2.95	23.26	20.31	90										100%
Main Line Miles Total			20.31											

Sidings & Yard Track Miles

Location					Condition/Type of Rail (%)									
	<u>MP</u>	<u>MP</u>	<u>Miles</u>	<u>Weight</u>	<u>CWR</u> <u>Fit #1</u>	<u>CWR</u> <u>Fit #2</u>	<u>CWR</u> <u>Fit #3</u>	<u>Jointed</u> <u>Fit #1</u>	<u>Jointed</u> <u>Fit #2</u>	<u>Jointed</u> <u>Fit #3</u>	<u>CWR</u> <u>Reroll</u>	<u>CWR</u> <u>Scrap</u>	<u>Jointed</u> <u>Reroll</u>	<u>Jointed</u> <u>Scrap</u>
90	4.22	4.51	0.29	90										100%
90	15.73	16.30	0.57	90										100%
80	21.28	21.99	0.71	80										100%
90	22.75	23.26	0.51	90										100%
Sidings & Yard Total			2.08											

Total Mileage **22.39**

Source: RLBA On-site Inspection

Appendix Seven

Track Material Unit Prices
Fishers, IN-Owned Rail Assets
Milepost 2.95 to Mile Post 23.26
3-Jul-18

		Unit Prices per		Comments
Steel (Rail)		<u>Component</u>	<u>Net Ton</u>	
Rail Scrap (Gross Ton)			\$319.55	
Steel (OTM)		<u>Component</u>	<u>Gross Ton</u>	Comments
Scrap OTM			\$319.55	
Timber (Ties)		<u>Component</u>	<u>Gross Ton</u>	Comments
Relay		\$20.00		
Landscape		\$8.00		
Scrap		-\$10.00		
Turnouts	Frog Size	<u>Component</u>	<u>Gross Ton</u>	Comments
Heavy	11	\$6,000.00		

Source: Vendors, American Metal Markets & RLBA Estimates

Appendix Eight

Summary of Shipmnet Volumes Fishers, IN-Owned Rail Assets Milepost 2.95 to Mile Post 23.26 3-Jul-18

	<u>Total</u>	<u>Rail Weight</u>	
		<u>80</u>	<u>90</u>
Tons per gon (scrap & reroller rail) =		100	100
Net Tons of Scrap Rail =	3534	100	3434
Number of cars (scrap rail) =	35	1	34
Total cars for each rail weight (rail) =	35	1	34
Net Tons of Scrap OTM (tie plates) =	2259	72	2187
Number of cars (scrap tie plates) =	23	1	22
Net Tons of Scrap OTM (jt. bars) =	201	5	196
Number of cars (scrap jt. bars) =	3	1	2
Net Tons of Scrap OTM (spikes/bolts) =	116		
Number of cars (spikes/bolts) =	2		
Net Tons of Scrap Turnouts) =	12		
Number of cars (scrap Turnouts) =	1		
Total cars (scrap rail) =	35		
Total cars (scrap OTM) =	26		
Railcars Grand Total	61		
Shipping Cost			
	<u>Routing</u>	<u>Railroad Price (per car)</u>	
	Indianapolis, IN to Chicago, IL	\$1,619	
	Cost to ship rail car from Indianapolis to Chicago =	\$1,619	

Notes: Use full 100 ton gon, stacked rails per gon varies by size (one inch board between layers) and 100 ton load for OTM. Assume tie plate weights of 12# for < or = 90# rail, 15# for 100# rail, 17# for 105/110# rail, 21# for 112/113/115/119/127/130# rail, 23 # for and 35# for 131/132/133/136/140/141# rail (big). Assume joint bar weights (per pair) of 40# for rail up to 85# rail, 50# for 85# rail, 65# for 90/100/105/110# rail, 105# for 112/113/115/119/127/130# rail, 115# for 131/132/133/136/140/141# rail. Tie plates are grouped together by base width with the predominate size showing the total number. Assume all relay ties, OTM and turnouts transported off-site at cost of purchaser. Cost to dispose of scrap ties on-site is reflected in valuation.

Source: Gross Liquidation Value of Track Assets (Attachment Two)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

**NORFOLK AND WESTERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

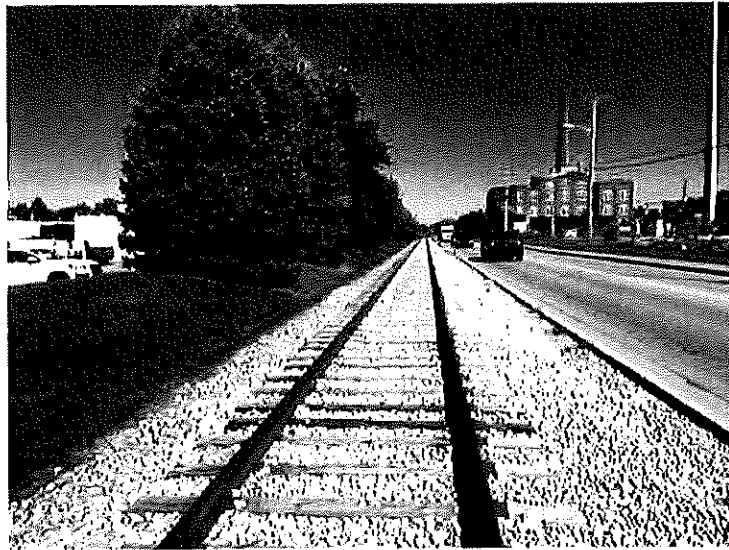
**CONSOLIDATED REPLY IN OPPOSITON TO THE MOTION TO VACATE NITUS
AND TO REACTIVATE RAIL SERVICE, AND TO THE VERIFIED MOTION FOR
PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)**

EXHIBIT C

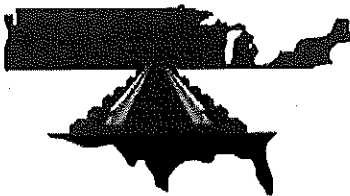
HOOSIER HERITAGE PORT AUTHORITY

Track Inspection Report & Rehabilitation Plan

NOVEMBER 2016



Prepared by:



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**HOOSIER HERITAGE PORT AUTHORITY
TRACK INSPECTION REPORT & REHABILITATION PLAN
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ATTACHMENT II Tie Inspection Reports

ATTACHMENT III Switch and Frog Inspection Reports

ATTACHMENT IV Switch Timber – Scope of Work – Bill of Material

ATTACHMENT V Order of Magnitude Estimate of Probable Costs

ATTACHMENT VI Connection to NS Tipton – Conceptual Plans and Options

**HOOSIER HERITAGE PORT AUTHORITY RAILROAD
TRACK INSPECTION REPORT
AND
REHABILITATION PLAN
Tipton, Hamilton and Marion Counties**

I. INTRODUCTION

A. Background and Scope of Work

The Hoosier Heritage Port Authority (HHPA) has retained the services of Jannotti Rail Consulting, Inc. (referred to in this report as the "Consultant") to inspect, evaluate and provide a report for the track on the passenger railroad extending through Tipton, Hamilton and Marion Counties. The Consultant shall provide a rehabilitation plan based on the inspection which categorizes priority locations. The Track Inspection and Rehabilitation Plan is based on the inspections performed in October, 2016 which concentrated on bringing the Railroad up to FRA Class Two level of service. Also included in the Report's Scope of Work is to provide options for reconnecting the HHPA to Norfolk Southern Railway on the northern end in Tipton, Indiana. The "Plan" also includes an "Order of Magnitude Estimate of Probable Costs" (Attachment V) that can be utilized for the rehabilitation planning and securing the adequate funding.

The Consultant's inspection is based on the minimum criteria set forth by the Federal Railroad Administration's (FRA); "Track Safety Standards" Title 49, Part 213 for Class Two track.

The Consultant recognizes that the minimum criteria required by the FRA for making safe and reliable movements over a section of track are the absolute minimum standards which should be adhered to regarding freight and/or passenger rail service. The trackage was inspected with the emphasis on Class Two Track standards which are described below.

B. Executive Summary

"Every railroad tells its' own story", and this Railroad is no different. The HHPA Mainline pays testimony to the attention to drainage and the engineering, construction and subsequent maintenance of the line throughout its history. The Consultant has never encountered a 37 mile length of track where there has been so little drainage issues for the majority of the trackage. There are isolated locations that must be corrected, but generally the Railroad is high and dry. The light rail, joints, and turnouts are in surprisingly good to fair condition overall. Work regarding those items will be required to bring the track to a "reliable" Class Two level of service but overall the steel components of the track are in relatively good condition. Crosstie conditions have been improved with a 4,849 tie replacement from Fishers to 38th Street in 2013, however a quantity of ties will still be required in isolated locations to cover all Class Two

**Hoosier Heritage Port Authority Railroad
Track Inspection Report & Rehabilitation Plan**

requirements within that section of the line. Tie conditions from Fishers to Tipton will require significant tie replacement.

The grade crossings on the HHPA Mainline range from very good to very poor in condition and are individually itemized for work requirements in the Rehabilitation Plan reviewed and defined below. Grade crossings typically displayed acceptable track structure but many had limited flangeways which questions their adequacy for Class Two passenger service. Some grade crossings will require complete rebuild where rails were loose and "pumping" from car traffic.

A significant question throughout the railroad is raising and maintaining an overall rating of Class Two standards. This could involve significant changes including moving insulated joints to provide adequate warning distance at grade crossing signals; upgrading tie replacement schedules to maintain better track structure; altering or replacing many grade crossings to allow for better flangeways; and replacing bridge timber decks on curves to meet super-elevation requirements.

The final focus of this report is to provide foresight on making a connection to existing Norfolk Southern (NS) track at the north end of the railroad. Roughly half a mile of track is in place, but has been reclaimed by residences, localities and nature leading up to the proposed interchange. The poor condition of the track will require multiple new grade crossings and complete rebuild to remove the railroad's isolation.

This Class Two rehabilitation plan is based on a two phased approach to repairs commencing on that section of track with the highest priority then continuing the rehabilitation on the remaining section. This Plan must be considered as flexible and is subject to "re-routing" should the demands of the railroad change or Class requirements change. The recommended repairs and "Plan" is best highlighted in Part III of this report. The total Order of Magnitude – Estimate of Probable Costs for the two phased HHPA Class Two Track Rehabilitation Plan is \$3,715,000.

C. Hoosier Heritage Port Authority Rail Line Description

The Hoosier Heritage Port Authority (HHPA) track is a north / south railroad that stretches from Milepost 39.3 in Tipton at State Route 28 to Milepost 3.0 at Belt Junction. The railroad comprised a portion of the former Norfolk and Western Railway's Western Region's Fort Wayne Division. The railroad has not been operated on since December of 2015. The then operating portion of the railroad terminated at SR 28 to the north and ended on the southern end at Milepost 5.1 at 38th Street in Indianapolis. The unique character of the passenger railroad is that it has been disconnected at the northern end from present day Norfolk Southern Railway in Tipton and CSX at Belt Junction.

The HHPA trackage can best be characterized as a single track, predominantly tangent with mild curvature and grade, light rail, with numerous grade crossings and a well-drained ballast and subgrade section. Crossties are primarily 7" x 8" and 9" ties and 8'6" in length. The single main track has 78 public grade crossings (by Timetable) with and without electronic warning devices between the "inspected portions of the railroad (MP

**Hoosier Heritage Port Authority Railroad
Track Inspection Report & Rehabilitation Plan**

39.3 – MP 5.1). Fourteen turnouts were inspected on the single main track and one off the main track at the wye tracks in Davin. There are 10 combination open and closed deck bridges and 10 combined stone arch and wide culvert bridges identified on the track chart.

D. Inspection and Procedure

The following report is based on a hi-rail track inspection performed by the Consultant, Paul Jannotti in association with Samuel Jannotti. Accompanying the inspectors were Mrs. Rhonda Klopfenstein and Mr. Glen Schwartz, representatives from the HHPA. The inspection was performed on October 4 and 5, 2016, and consisted of a complete review of the main track, turnouts and grade crossings along the line from Fishers (MP16) north to Tipton and the Wye Tracks in Davin and the following day from Fishers south to 38th Street (MP 5.1) respectively. A short section of track was not inspected between Kessler Boulevard and 56th Street due to track equipment occupying the track.

The hi-rail inspection concentrated on crossties, grade crossings, switch timber and critical measurements at turnouts, gage and the condition of rail, joints, switch points, frogs, switch machines and guard rails. Special considerations became strikingly apparent on upgrading most of the line to Class Two, which has become the major focus of this Report and accompanying rehabilitation plan. The Consultant provides a walking inspection of the track on and approaching the bridges and the timber guard rails. Only a cursory review of the superstructure is performed and not a full “bridge inspection” of the structural members, sub-structure and foundation system.

E. FRA Track Safety Standards

Highlighted below and included for informational purposes to familiarize the reader with FRA requirements, the Consultant includes a quick note regarding the FRA Track Safety Standards. FRA Class 2 level of service is the minimum track safety standards requirements set forth by the Federal Railroad Administration (FRA) to operate the railroad at 25 miles per hour for freight traffic and 30 miles per hour for passenger service. FRA Class One level of service restricts operations to 10 miles per hour for freight traffic and 15 miles per hour for passenger service. All references made within this report to FRA Class of track and speed regarding development and implementation of a track maintenance and capital rehabilitation plan will consider passenger and freight service at the minimum Class Two track even if the track is at locations that will not operate at 25 MPH (freight) or 30 MPH (passenger). Though the railroad is presently isolated from freight activity, the rehabilitation plan considers the possibility of freight service in the future and the typical FRA requirements and magnitude of operation for that level of service.

All FRA classes of track require defined systematic inspections of the track and the periodic “review” of the FRA or State governing body. If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all the requirements. If a track segment does not

**Hoosier Heritage Port Authority Railroad
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meet the requirements of even Class One standards, operations may continue provided certain conditions and limitations are met.

Table 1 below lists a number of selected track criteria and surface parameters that are measured by the FRA "Track Safety Standards" that delineate the minimum requirements for Class 1, 2 and 3 track.

**Table 1
49 CFR PART 213 TRACK SAFETY STANDARDS**

	Class 1	Class 2	Class 3
Gage	4'8" to 4'10"	4'8" to 4'9-3/4"	4'8" to 4'9-3/4"
Alignment Deviation in 62' chord (tangent & curved track)	5"	May Not Be More Than 3"	1-3/4"
Track Surface Runoff in 31'	3-1/2"	3"	2"
Profile Deviation in 62'	3"	2-3/4"	2-1/4"
Deviation from Zero Cross level On Tangents	3"	2"	1-3/4"
Difference in Cross level between Any 2 Points < 62' apart	3"	2-1/4"	2"
Variation in Cross level on spirals In 31'	2"	1-3/4"	1-1/4"
Rail End Mismatch, Tread	1/4"	1/4"	3/16"
Rail End Mismatch, Gage	1/4"	3/16"	3/16"
	Class 1	Class 2	Class 3
	Minimum Number of Non-Defective Ties per 39'		
Tangent Track and Curves ≤ 2 degrees	5	8	8
Turnouts and Curved track over 2 degrees	6	9	10
Maximum Distance from Center line Joint to a Non-Defective Tie	24"	24"	18"
Replacement of Center Cracked Joint Bars	Mandatory	Mandatory	Mandatory
Replacement of Cracked, Broken Or excessively worn joint bars (not including center cracks)	Optional	Optional	Mandatory
Minimum # of Bolts per single Rail-end at Joint	One	Two	Two
Torch Cut Bolt Holes in Rail At Joints	Permitted	Prohibited	Prohibited
Torch Cut Bolt Holes in Joint Bars	Permitted	Permitted	Prohibited

SELECTED FRA TRACK SAFETY STANDARDS

**Hoosier Heritage Port Authority Railroad
Track Inspection Report & Rehabilitation Plan**

Figure 1 below depicts the maximum distance that the centerline of one adequate crosstie shall be from the rail joint for Classes 1 and 2 track.

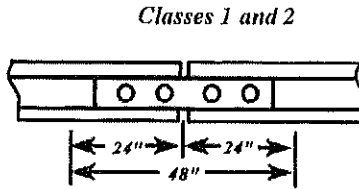


Figure 1

F. Overview

An initial investment and program to rehabilitate or simply maintain track and bridges to any FRA Class of track should take into account the density and nature of the rail traffic and the level of maintenance required to keep it at that level for any reasonable length of time. The variation of upgrade is determined by the existing condition of the track structure and the proposed volume and nature (freight or passenger or both) of the rail traffic the track will be subjected to. On typical track improvements, it is often preferred to upgrade the track to the next FRA Class of proposed operating service. Though the operating objective or "speed" is not desired or perhaps even attainable, it provides for a more reliable operation and longevity of repairs as track and structures continue to deteriorate over time and under traffic.

For clarification in this report, it is important to make a distinction between FRA Class of Track and level or Class of service. The FRA Track Safety Standards (49 CFR Part 213) basically considers both as one and the same. Level of service or Class of Service entails the speed desired on the railroad or any particular section of the railroad. FRA Class of Track will refer to the track safety standards as they pertain to standard criteria for the track structure regardless of the desired or proposed speed of the railroad. The Track Rehabilitation Plan provided below focuses on both Class Two level of service and Class of Track pertaining to the longevity and effectiveness of the rehabilitation.

When developing and implementing an extended comprehensive maintenance and capital track program for the main track, the track has been evaluated based on the existing conditions of the track and right-of-way, the intended Class of Track (Class Two) and the projected rail traffic or traffic volume the track is expected to be subjected to.

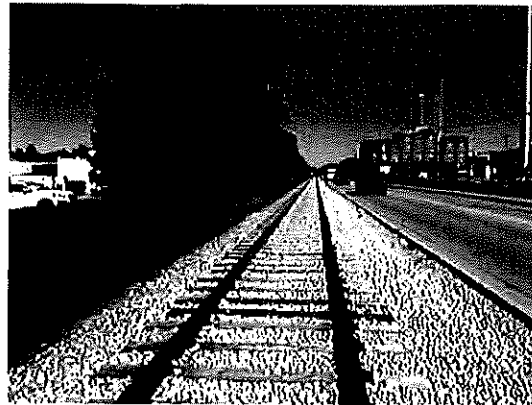
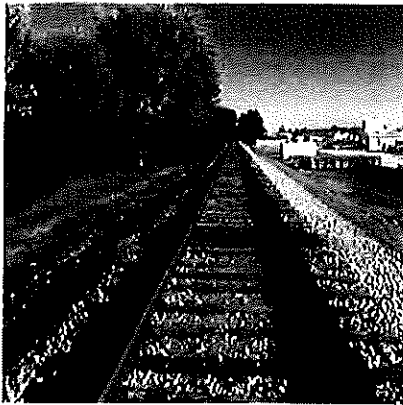
II. TRACK AND RIGHT-OF-WAY REVIEW AND DISCUSSION

The following narrative describes the general conditions of the trackage inspected and right-of-way separated into elements of the track structure.

**Hoosier Heritage Port Authority Railroad
Track Inspection Report & Rehabilitation Plan**

A. Subgrade

The subgrade of the overall trackage on the HHPA can be best described as good. There were no sections of track showing signs of significant subsidence due to under-grade failure. On the contrary, the surface appearance of the railroad shows that it was built to a complimentary standard, high and dry with substantial drainage relief emphasized.



A sag was filled in over an under-grade drainage facility adjacent to the Indiana Transportation Museum which was brought up by Mrs. Klopfenstein and Mr. Schwartz. Also Bridge 38.87 had a sagging Southern approach. As typical with bridges, even on roadways, the transition from the existing approaches to the more solid structure often creates vertical surface problems. The sag on this approach is probably not due to any subgrade failure, however.

B. Vegetation

The FRA addresses vegetation in the Track Safety Standards publication as requiring vegetation to be controlled so that it does not create the following conditions:

- create a fire hazard to track carrying structures;
- obstruct visibility of way-side signage along the right-of-way;
- obstruct visibility at Highway grade crossings;
- interfere with railroad employees performing normal track-side duties;
- prevent the proper functioning of signal and communication lines; or
- prevent employees from visually inspecting moving equipment from their normal duty stations.

Levels of criteria for vegetation for different FRA Classes of track are not distinguished in the Track Safety Standards.

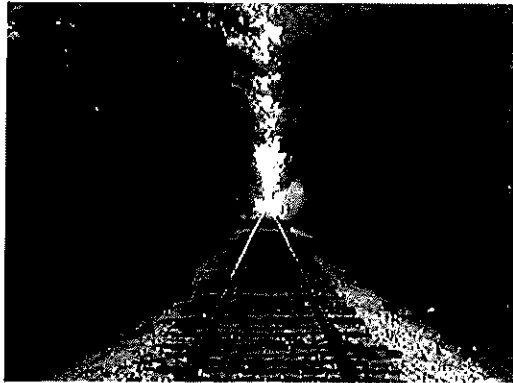
Wayside Brush and Overhanging Limbs

Vegetation encroaching on the track structure was identified frequently along the length of the Hoosier Heritage Port Authority Railroad, in part due to the railroad being out of

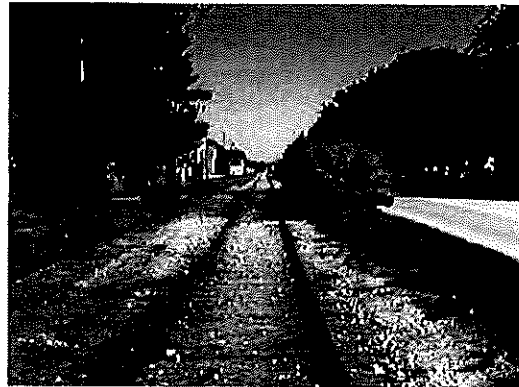
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operational service since December of 2015. There were a few trees that had fallen over the track which required removal to continue the track inspection and locations identified that were fouling and encroaching on the envelope.

The propensity of the vegetation encroaching on the track structure may not be fully "fouling" the track currently as described in the above Track Safety Standards, but it was identified at numerous locations along the single track as potential to foul in the near future. With this in mind, it is prudent to address the brush cutting during the initial rehabilitation effort which typically minimizes the cost of the work since it is done with already mobilized contractors and avoids the necessity of returning to perform the work at a short juncture after the rehabilitation is complete. The Railroad does not have operable windows on its passenger cars but brush and overhanging limbs should be removed to maintain personnel and passenger safety as well as conforming to the FRA safety standards.



North of Carbon Street



North of Carbon Street



Dead Tree near MP 13.5



MP 22.7

The numerous grade crossings and proximity of the line to busy car traffic necessitates the removal of wayside brush and growth to provide a 200 foot line of sight on each quadrant of grade crossings from both limits of the right-of-way. This is especially important to maintain safe passage for both rail service and car traffic where cantilevers and lights are not provided.

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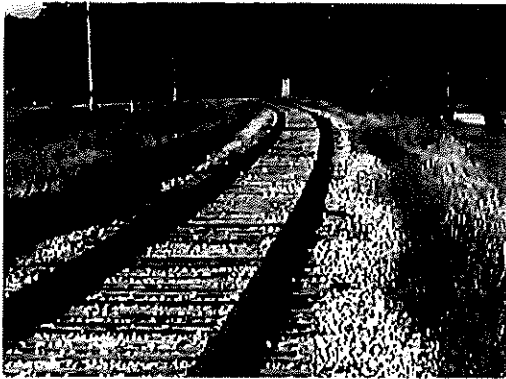
Track Structure Weeds

There was only one location where the inner track weeds were significantly prevalent and that was on the south leg of the Wye track in Davin.



The main track had some locations where single dead strands of vegetation was sticking up out of the track structure but it was generally not damaging to the track structure. It is evident that the continued weed spraying program by the HHPA has well-kept control of the weeds along the whole length of the main track.

One location on the north end had a very hard to kill plant on the shoulders of the track which the Consultant is familiar with. It is an ancient plant growth called "Equisetum" or "horsetail" and is typically not affected by typical weed spraying. It is prudent to mention this type of plant to the weed spraying contractor in advance. Many national track weed spraying contractors are familiar with this particular vegetation.



C. Drainage

Proper drainage is essential to the stability of any class of track structure and most believe it is the single most important track and roadbed item to maintain reliable train service. The Consultant concurs with that philosophy. The solidity of any Class of track structure is based on the foundation for which the track sits; drainage is the pillar of that foundation.

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Regarding overall drainage, it was evident that the railroad was very well engineered and constructed originally and maintained throughout the course of time. Rarely does a track inspection over 37 miles of track exhibit such a high and dry right-of-way with so few drainage problem locations. There were only a few "standing" water locations identified where the drainage was infiltrating the track structure along the entire railroad. Those included 56th Street where the hy-rail truck had to be taken off the track and set back on after skipping between Kessler Boulevard and 56th Street due to the track equipment occupying the track. The other location was between the embedded street running track at Logan Street in Noblesville and the two bridges north.



56th Street



Noblesville

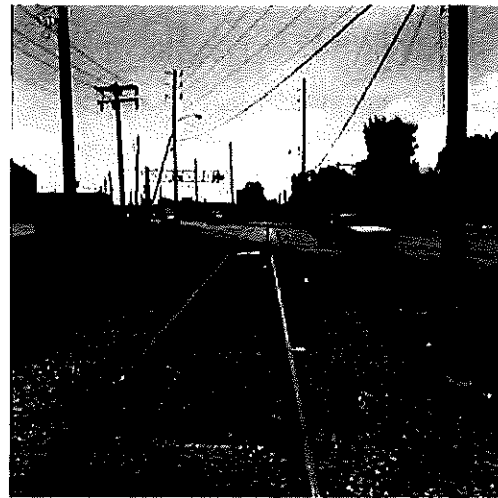
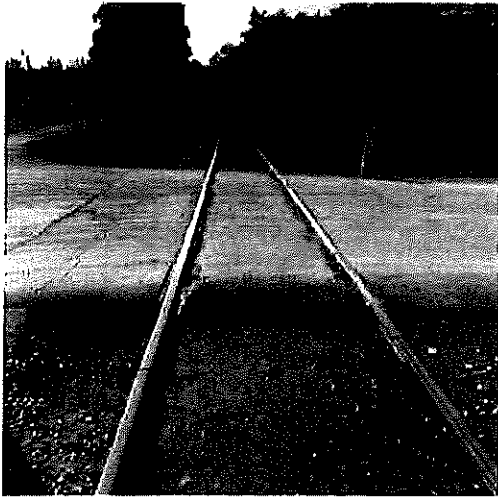
Short sections of open track between four lane grade crossings with medians in the center showed signs of no drainage but were not severely damaging to the track structure. Ties at these locations were well attended to recognizing they "could" be problem locations.

There are some grade crossings on the line that have dirt, fines and debris infiltrating the ballast section on the track approaches due to poor drainage flow paths from the adjacent roadway. To correct the drainage at some crossings could be a formidable task on both the budget and the maintenance effort. Every railroad, especially in the north where snow plowing is prevalent and anti-skid is applied to roadways for vehicle traction, the track suffers and the problems are further amplified.



Median at Keystone Avenue

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The crossings that have poor drainage conditions often create surface problems on the approaches to the crossings. Though there are a few crossings that have this condition it presently is not a problem due to the infrequency and slow speed of the rail traffic. The problems will become more prevalent on the subject crossings when the track is upgraded to Class Two level of speed and service. The impact of the higher speed on the track below magnifies track surface irregularities and the track becomes generally harder to maintain. As discussed above, the overall line has been well engineered and constructed with attention to drainage so therefore the Plan will need to concentrate on correcting these drainage issues using existing facilities and perhaps installing pipes and inlets during the rehabilitation effort.



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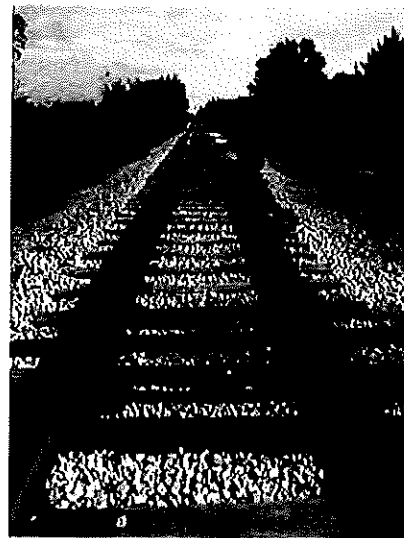
At 96th Street the right-of-way fills up with water during storm events on the southeast quadrant. It does not infiltrate the track or its subgrade but it creates some serious ponding that has become an issue with adjacent landowners. Further south, an estimated 500 feet, there is a turnout and side track on the east side of the Main track. A worn, corrugated galvanized pipe may have collapsed under the side track lead which has created the problem. The galvanized pipe outlets into a cross drain that goes under the railroad just south of the turnout and into the main drainage for the area to the north of the track. The inlet to the pipe is somewhat obstructed but needs to be cleaned out and perhaps the flow will be more adequate. Otherwise it may be prudent to put in another main track cross drain before the turnout and send the drainage to the west side of the track earlier.



Sluice Pipe under Main Track



Galvanized Pipe Under Siding



Turnout at 82nd Street

D. Embankment Stabilization

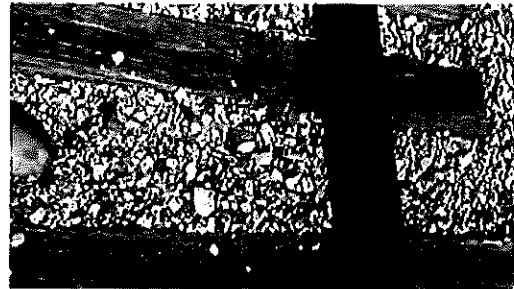
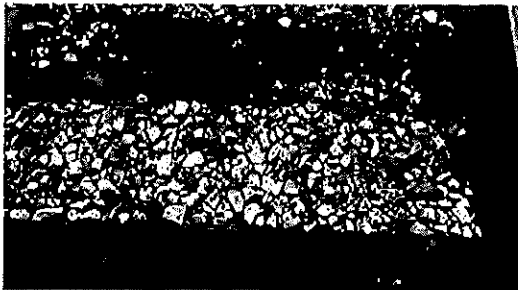
There were no locations that exhibited any problems regarding sloughing off embankments, slides or damaging fill failure.

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E. Ballast Section and Track Surface

Ballast Section

The overall condition of the ballast section on the HHPA Mainline is generally in fair to good condition with the exception of numerous grade crossing approaches and some bridge approaches. The benefit of the superb drainage and the high and dry original engineering and construction lent itself to a clean ballast foundation that has lasted. Though the traffic volume is very light with no freight and "mild" passenger service now, a railroad exhibiting this magnitude of substantial clean ballast with good surface and alignment, also discussed below, pays tribute to those that have maintained it. Every Railroad tells its own story, and the story with this line is that it was well engineered, constructed and maintained over its history.



Typical of many railroads, brand new highway overpasses that cross over railroads don't design in adequate drainage for the railroad underneath and will ruin the track's ballast section by fouling it with dirt and fines during and after the construction of the bridge. The track at the Overhead Bridge where Route 52 intersects with I-69 will need to be cribbed or undercut to remove and replace the fouled ballast. Though that is not a problem now the higher speed will cause deleterious impact on the track surface.



Track Surface and Alignment

The general track surface and alignment of the Main track can best be described as good. The surfacing work that will be required to bring the specific sections of railroad to Class Two speed and service will be surprisingly less than what the Consultant had originally, (without seeing the Railroad) anticipated.

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An important consideration with the surfacing is the frequency of defective ties within any track that is raised and lined. If the track is only "safety tied", that is spot tied every 3 or 4 ties to make it safe for movements on say storage tracks, then the defective or nearly defective ties do not raise and consequently you have less support than if you left the track at the existing elevation. The tie replacement program will take this into consideration.

F. Cross ties

A general statement regarding the overall tie conditions on the line can best be described by line section. A tie replacement program occurred in 2013 where 4,849 ties were replaced from Milepost 16 down to 38th Street at MP 5.1. The tie conditions in that section of the railroad are relatively fair in relation to Class Two level of service but additional spot work will be required to bring the track to a "reliable and lasting" level of Class Two track. The north end of the line, that is, north of Milepost 16.5 has received some tie replacement work. In the direct area of MP 16 which was rehabilitated through to Lantern Road at Milepost 16.5 received a tie replacement, as did Noblesville from Bridge 22.62 through the reverse curves north.

In order to get a subjective sampling of the tie conditions on the 34.2 operating section of the Railroad, the Consultant takes a count of 100 ties and rates them per expected years of effective life.

Twenty tie sample counts were taken on the HHPA Mainline track inspection. Tie counts are randomly selected counts at different locations with an emphasis placed on general locations that included cuts and fills, tangents and curves, open areas and heavily vegetated areas. The tie counts are representative and random samplings of the tie conditions at any particular location. The more counts taken, the more precise the representative sample on the subject Railroad becomes.

The twenty sample tie counts are included in Attachment II – Tie Inspection Reports for HHPA at the end of this report. One of the twenty sample counts was discarded due to the track being covered with gravel with what appeared like a former grade crossing on the siding track in Fishers. Each sample consisted of rating each tie in a 100 tie block for defective, one to five years effective life, five (six) to ten years life, ten (eleven) to fifteen

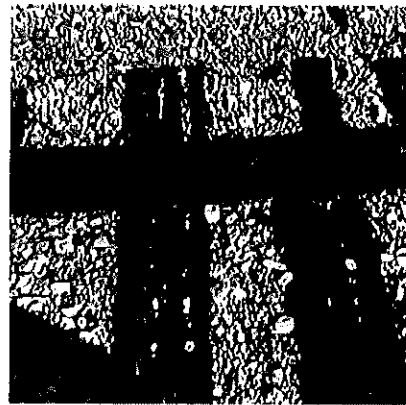
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years, fifteen to twenty years of extended life. It should be noted that zero (0) ties are defective ties now. Tie count locations commence with a yellow keel mark on the base of the rail with an arrow in the direction the tie count was taken. The mark identifies the location for duplicate review.

The numbers in the small squares on the top row of boxes on the tie count sheet are there for showing the reader the order in which they are documented when the inspector is performing the tie count and the order of presence there may be defective clusters at any particular location. The order is from top to bottom and left to right across the sheet.

To reflect the samplings and adequately portray the two prioritized line sections from Fishers to 38th Street as Priority One and Fishers to Tipton as Priority Two, the Consultant broke the tie counts into two corresponding sections. The question was asked during the inspection if by immediate eye "does this southern section meet Class Two standards now?" The Consultant's answer was a relatively immediate no. Upon reviewing the one-hundred tie sample counts the general tie conditions show that it most certainly does meet Class Two track standards in some locations but not others.

One exception is the joint ties. Of the eight tie samples taken from Fishers to 38th Street there were 7 joints that did not have any effective ties underneath or within the 24 inches either side of the rail end. (Refer above to Figure One). There were four joints with a five year or less life remaining tie under the joint and a defective tie. To rehabilitate the track to a reliable Class Two standard that will not lose its longevity within four or five years or less, the Consultant believes the defective tie under the joint should be replaced and share the joint burden with the five year tie.



The second exception is clusters of defective ties in a row. Though the 2013 tie replacement program replaced 4,849 ties and the change-out was generally well distributed to break up clusters, some clusters still remain. Surprisingly the eight tie cluster was just south of 116th Street.

Overall, another healthy contingency of ties should be allotted in the Rehabilitation Plan to break-up any further clusters identified and to bring all the joint tie conditions up to acceptable FRA Class Two standards.

As can be seen by the Tie Inspection Reports, the percentages for defective and five year ties ranged from 11% to 42%, so the overall average is not necessarily indicative of what is out in the field.

Of the eleven tie samplings taken on the north end Milepost 16.5 through to State Route 28 at Milepost 39.3, the defective tie count ranged from 37% to 64% with an overall average of 53% defective. Couple the five year ties with the defective ties and an overall

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average of 66% ties have five years or less remaining life. The possibility is by the time the Priority Two is completed the five year ties become due! Therefore to accomplish a "reliable" plan, additional ties are included in the rehabilitation.

These tie count reports and breakdown samplings were developed from old PRR MW methods for evaluating the maintenance of track. The Consultant has modified the forms to better suit the application.

While crosstie conditions are indisputably important to the adequacy and acceptability of the track structure, it is theoretically possible to have a large percentage of defective ties in track and still meet FRA requirements. As shown in Table 1, both Class 2 and Class 3 can have as few as eight non-defective ties in each 39' rail length of tangent and curves ≤ 2 degrees providing they are distributed uniformly. That means roughly 65% of the ties in track can be defective and still be acceptable Classes 2 and 3 track, again if properly distributed. Class One track can have as many as 75% defective if distributed correctly.

Obviously, a track with tie conditions described above is not going to last long even for infrequent freight service. The increased load on the remaining non-defective ties will lead to their premature failure. That failure increases the incidence of defective clusters. "Clusters" are numerous defective ties in a row. In turn, the track is downgraded to the next acceptable level or "Class" of track. It takes only one defective tie cluster to drop a segment of track from Class 6 or 110 mph to Class One.

In considering the tie replacement program, the percentage of defective ties that must be replaced is primarily contingent on the existing defective tie count, defective ties at joints, the spacing of the ties, the rail section, the proximity to turnouts and bridges, the density of traffic and how long it will be until the next tie and surfacing cycle. As noted above, ties under joints that are supported by one defective tie and a five year tie will have the railroad struggling to keep up with FRA standards for Class Two track soon after the track is fully rehabilitated.

As a note, typically tie replacement programs of any magnitude on any railroad or facility will often neglect grade crossings or areas where the track is covered with dirt and debris. These locations are often the locations that cause the greatest problems because they haven't been exposed and had the required tie replacement. In a tie replacement program, there should be accommodations made to expose the track, at least for inspection and possible replacement of the ties if necessary. Any track is only as good as it is at its weakest link. Many times light traffic gravel grade crossings or dirt covered track become that weakest link.

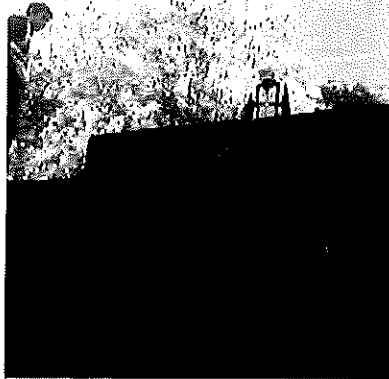
G. Bridge Timber

There are 10 combination open and closed deck bridges and 10 combined stone arch and wide culvert bridges identified on the track chart. As defined above, the Consultant performs a full inspection of the open deck bridge timbers and deck but only a cursory review of the structures from what is visible from the deck. Under-grade stone arch structures and culverts that were not apparent from the hy-rail vehicle were generally not

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inspected. All open deck bridges were inspected on foot and were all in generally fair to good condition. Both recent and former work was easily identified.

The six foot stone arch bridge at 18.30 had some minor grout loss at the west side wing wall which was undermining the southeast approach wall. Some shoring and ballast should be installed there and on the closed deck.



The inner track guard rail or "rails between the rails" that come to a point and stretch out as much as 30 feet from the headwall of both sides of a bridge are installed to deflect a derailed car wheel flanges back to a position that will keep the car on the bridge. Most railroads have taken them off the approaches because standard tie insertion equipment cannot install a tie under the inner set of rails. Production tie gangs will skip them all together with the intention that a "hand" crew will come back and install them later. That very infrequently happens so typically there are numerous and dangerously few effective cross-ties at one of the most critical areas on every railroad, bridge approaches.



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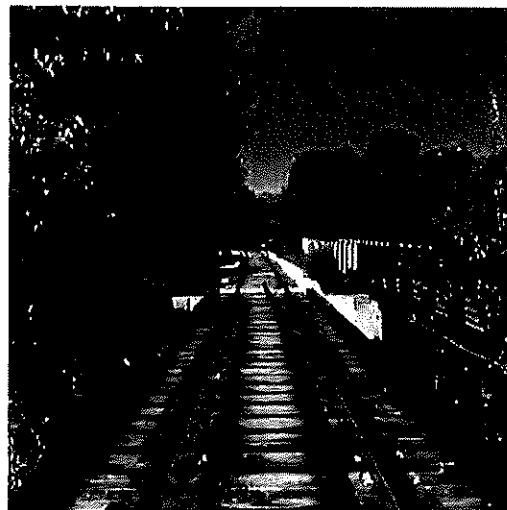
Bridges 20.71 and 20.80 both had good bridge deck timber and well distributed effective ties on the approaches under the "nose" of the inner track guard rail. Bridge 22.62 in Noblesville requires additional ties on the south end approach within the nose area of the inner track guard rail. Gauge at this location measured 57-5/8". All the ties between Bridge 22.62 and 22.69 have been recently replaced and the rail on the high side of the curve through Bridge 20.80 was replaced.



Bridge 20.80



Bridge 20.71



Bridge 20.71

Bridge 29.29 had fair deck timber and ballast is needed on the north end approach. There is a mild sag on that north end approach probably due to lack of ballast. Bridge 38.87 also had a sagging approach on the south end and a cluster of 8 defective ties in a row under the inner track guard rail. There is as much as a 4-1/2" sag on the north approach to Bridge 5.59 which will be corrected during the rehabilitation.

H. Rail

The primary rail section on the Hoosier Heritage Port Authority line is 9020# RA with various other sizes off of grade crossings. The Consultant visually encountered 112# RE, 115# RE, 132# RE and 136# RE off of some grade crossings. The Wye tracks in Davin had 9020#, 8090# and even a little 110# off the main tracks. The majority of the rail on the Main track was in surprisingly good condition. Very few areas required any full or partial continuous rail replacement. Spot locations where the rail is embedded in dirt and debris typically requires a rail replacement.

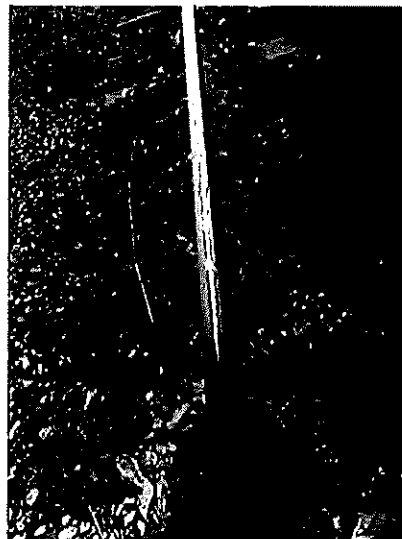
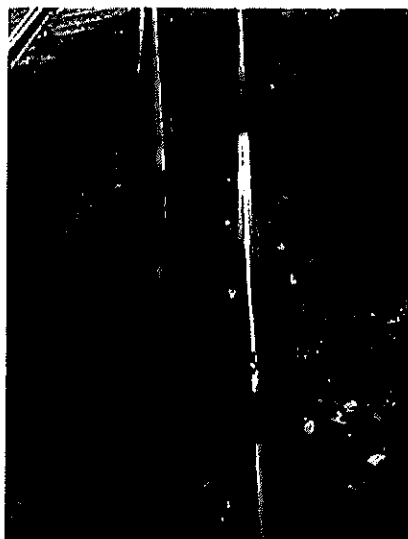
The most notable item on the entire inspection and something that this Consultant never encountered before, was a strange welded bead of what appeared to be stainless steel over the top of the center of each rail that was roughly three feet long and spaced about every

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four feet on each rail head. The intermittent pattern started at the turnout at Fall Creek Milepost 6.1 and extended to roughly 900 feet north of 39th Street.



On further investigation, the material is stainless steel and is welded into an electric arc burned groove in the center of the rail head that maintains the electric shunt in rusty rail conditions so the circuit is not lost when trains are approaching grade crossings that are protected with electric warning devices. There is a railroad in Minerva, Ohio that performs the same procedure to maintain the circuit and it is conjectured that it was developed and implemented by the same owner.



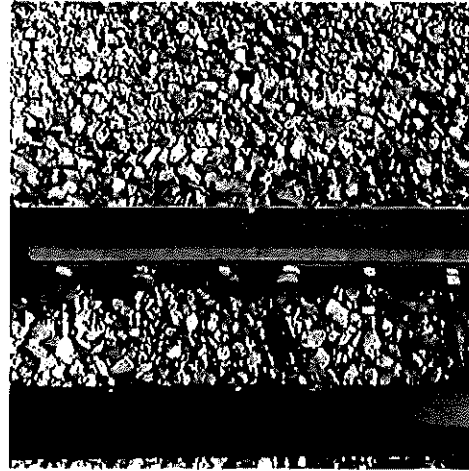
The stainless "bead" has peeled up in certain locations and the Consultant feared it could pierce the rubber tires of the hy-rail during the inspection. It did not, but the peeled up sections revealed the "burned head" below which creates an even greater fear, that the burned rail has compromised the integrity of the rail. A broken head at 10 miles per hour is not a "good thing".

As earlier described the propensity of the rail is primarily good. There was only one location that had significant curve wear on the high side and the same magnitude of tread wear on the low side. Tread worn rail is the depth of the head itself. Gauge worn rail is

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wear on the gauge surface of the rail head typically the high side of curves. Both were observed at the two bridges in Noblesville (Bridges 22.62 and 22.69). As described earlier, the high side of Bridge 22.69 was already changed out recently.

The picture to the right shows an insulated joint on the south approach to Bridge 22.62. The track is curved and the high side rail is curve worn. Though the curve wear is hard to see in the picture of the painted insulated joint, the width of the head of the adjacent inner track guard rail can reveal the magnitude of the curve wear on the running rail. Though the gauge wear is significant, the rail probably has significant life remaining.



The above picture was not from HHPA Railroad but is included as an example of a "Dutchman".



The inspection revealed a small number or "Dutchman" from one end of the line to the other. A "Dutchman" is a short section of rail anywhere from an inch to 10 feet or more where the rail has broken off and is either jointed in the track with joint bars on both ends and very close to one another or a short piece of rail that is secured within a joint bar by a bolt within that jointed section. The short piece of rail may be within the joint bar limits and not bolted but still "relatively" secured with the adjacent joint bars (splice). Typical of industry trackage, Dutchman are a quick and easy repair for the ends of the rail which might simply break-off the rail end and are still secured by the joint bars. Most Dutchman are not problematic but will become problematic in the future especially under Class Two level of service. The "Dutchman" will be replaced with the rehabilitation effort and are included in the Plan as a "Miscellaneous Rail Replacement" contingency item.

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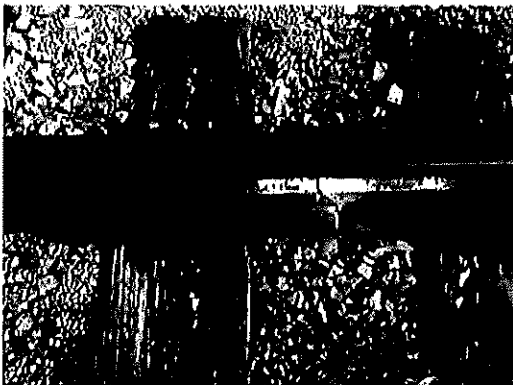
When considering the reconnection to Norfolk Southern on the north end of the line in Tipton, the track that is covered with grass and dirt will probably not yield reusable rail, plates and joint bars. Typical of a track that is covered with dirt, vegetation and debris the rail base and web are severely corroded. Joint bars have section loss that when reused and tightened thoroughly with new track bolts, nuts and washers still "move" under traffic and are loose fitting under the head of the rail. This is typical of a track structure that is not drained, or embedded in gravel, asphalt and concrete and not exposed. Some locations severely corrode steel components of the track structure because of highly corrosive cinders, highly acidic aggregate and coal fines. The Plan will include new or Class One Relay Rail and Other Track Materials (OTM) to reconnect the line in Tipton.

I. Other Track Materials (OTM)

Joints – Bolt, Nut, Washer Assemblies

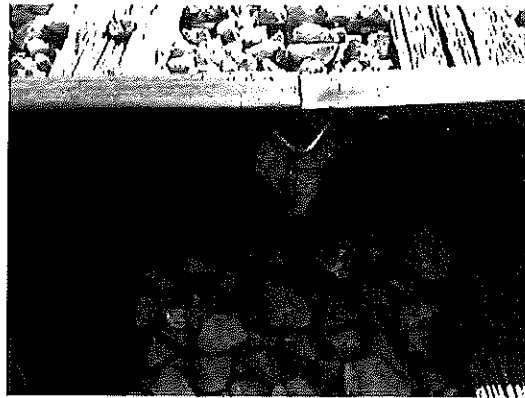
The Mainline track has generally joints that are tight with the full complement of bolt assemblies as designed, however there are loose joints and loose bolts at numerous isolated locations. A loose joint has all the bolts frozen or loose and the bars could be moved if kicked. If a loose joint was encountered on the inspection it would be red-ribboned for later identification. Loose joints can create rail-ends to mismatch on the gauge side of the rail head which can derail cars.

The line had an inordinate amount of cracked and broken bars. They were no doubt previously identified however because they were paint marked by a previous inspector. The propensity of the cracked bars were typically between the outside bolt holes and did not need to be replaced in 10 mile per hour traffic. Though cracked bars of the defect described are allowed in Class 2 track, a healthy contingency of replacement bars will be included in the rehabilitation plan and will be replaced when the work commences. The inspection found numerous cracked bars but there were no bars that were singularly or both broken in the center that would warrant immediate replacement.



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There were two sets of compromise joint bars found that were welded together at the center just south of 96th Street. They, like the cracked bars were paint marked by a previous inspector and are obviously being watched, however they will require replacement in the rehabilitation also.



Typically on most track rehabilitation projects bolt tightening is incidental to raise, line and surfacing track to remove surface and alignment imperfections.

The number of bolts is estimated and paid for on a unit price per new bolt assembly (bolt, nut, and washer) furnished and installed. Cracked or broken bars are replaced, either with an inventory furnished by the Owner or furnished and installed by the track contractor. A separate pay item for replacement bars minimizes the "unknown" factor that a track contractor will overestimate to protect his/her pricing. The other end of the coin is that the contingency needs to be "watched" as work progresses so that only the cracked and broken bars are being replaced and the replacement counts are accurate.

Tie Plates

The line trackage was generally well supported with primarily single shouldered tie plates, however some locations will require a contingency for plates, similar to the bars but not nearly as extensive, to be installed when replacement cross ties are installed. If the plates are not fully used, they need to be inventoried where they are protected from theft and utilized later as needed.

Rail Anchors

Typical with most light lines there were few rail anchors attached to the rail to restrict longitudinal movement.

J. Special Trackwork (Turnouts)

This Consultant considers drainage and turnouts as the most maintenance intensive single-track items on the railroad and the most probable to cause catastrophic service failure if not attended to properly. The maintenance attention to "details" on turnouts, namely, to the switch timbers, frog and point welding, tight joints, clips, rods, slide plates, etc., surface and drainage, profile grinding new and old stock rails and points and attention to critical measurements, make the most dramatic difference to the longevity of the components that make up the turnouts.

Fifteen turnouts were inspected on the Mainline and Wye Track in Davin and ranged generally from fair to good condition with two rated poor, mostly because of individual components that need replaced or repaired. Those two included the East Wye Track in

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Davin, off the Mainline and 46th Street turnout that had generally poor timber and the frog.

Switch and Frog Inspection Reports used to inspect and record the results of each turnout are in Attachment III. Turnouts that require switch timber replacement are individually listed with lengths and quantities in Attachment IV - Switch Timber - Scope of Work - Bill of Material. The Switch Timber Bill of Material must be considered as flexible and used as a guide for the Order of Magnitude Estimate. Individual switch timbers will require field verification prior to bidding the work or a track contractor commencing the rehabilitation work.

As a general maintenance item, all turnouts require profile grinding.

Profile grinding stock rails and switch points refer to grinding the cold-roll metal flow of steel off the rail (stock rail) that receives the scissors point at a switch. Rail traffic work hardens the rail it runs on and creates a lip of steel that flows over the side of the rail on tangent track. That metal "flow" or lip, if not ground off, will obstruct the switch point from closing flush up against the stock rail. Rail traffic over the new rail and turnouts will "cold flow" the rail at an accelerated rate because the new rail has not been "work hardened" yet.

The switch point, narrow at the point to receive the approaching wheel flange and gapped by the flow of the stock rail can break off the tip of the point or worst case, derail the approaching, facing, traffic because it doesn't close. Almost 100% of the time the point breaks off and thus accelerates the deterioration of the switch point (and stock rail) with every move of traffic. Similarly, the back-side of the point should be ground off so it doesn't obstruct proper closure. This "profile grinding" should be done on the stock rail from six inches ahead of the point to the head separation of the closed point to the stock rail and where the flow begins behind the back face of the point. Though it may seem as a trivial item of concern, profile grinding at turnouts should be a part of the annual programmed maintenance regimen for all turnouts.

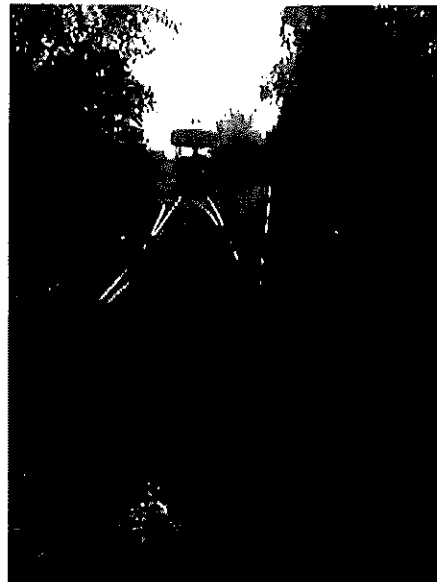


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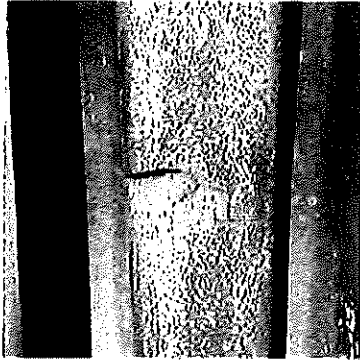
A listing of individual items observed on the inspection are noted below:

South of 46th Street Turnout – Clamped (out of service – O/S) turnout. Chipped right hand point. Braces are loose and switch timber throughout the turnout are poor. Frog is poor and should be replaced or at least the risers welded. This is where the aforementioned stainless steel bead commences heading south.

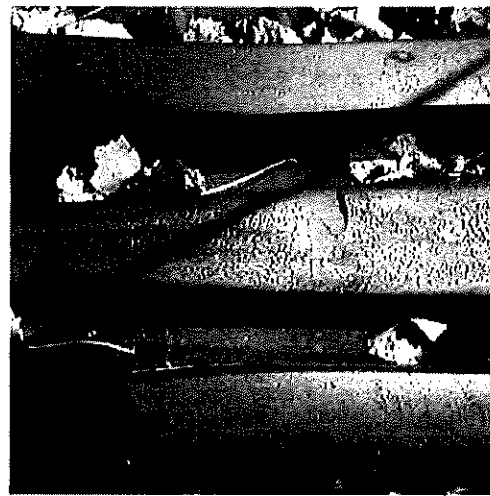


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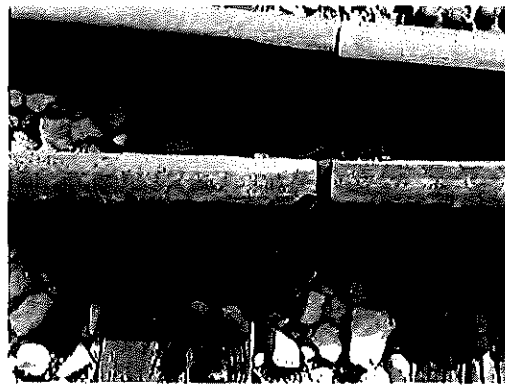
South of 56th Street Turnout – O/S, Frog is poor, reverse move back to back measurement is O/S, Frog needs replaced.



A cracked frog point is sometimes “weld-able” if it does not migrate through the entire point and definitely into the casting. It has been the prudent action to simply replace the frog then to attempt to cut out the fracture and build the point from scratch. Even the best of frog welders cannot always make a weld of this magnitude and have it last for any length of time. The fact that the track will be raised to Class Two level of service negates the option of welding. The frog must be replaced.



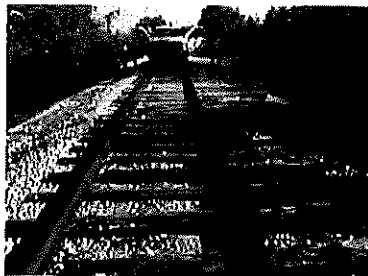
South of 82nd Street Crossing – Chipped left hand point needs welding. Needs headblock timber (gauge rod at location presently), worn frog but fair. Small 1-1/4” break out off a rail trailing out of the frog. It will be replaced in the miscellaneous rail replacement item in during the rehabilitation. Heel block missing a bolt.



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South of 96th Street Crossing – Clamped for normal moves O/S. Discussed above regarding the drainage. Chipped left hand point, loose bolts in frog area and worn risers that need welding. Poor switch timber through closure and frog. Right hand stock rail tread worn.

The picture below shows switch timber in place on the Main Track just south of the above turnout. The prior turnout has been straight railed (taken out). In order to surface the track efficiently and the surface to “hold”, straight railed turnout timber must be replaced with regular ties.



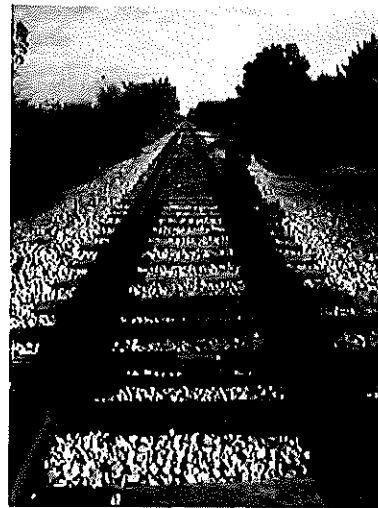
South of 96th Street Crossing

South of Milepost 16 (South Run-around Turnout – Fishers) – Switch rods are close to switch timber, mildly chipped reverse left hand point. Switch timber are good but measurement for Face and Check gauge need correction on reverse move.

North Run-around Turnout at Fishers – Right hand point needs welded. Broken left hand heel block.



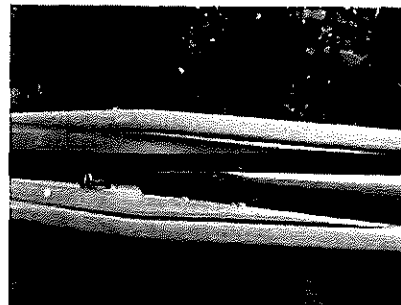
North of 146th Street Turnout



South of 96th Street Crossing



South of Milepost 16



North of 146th Street Turnout

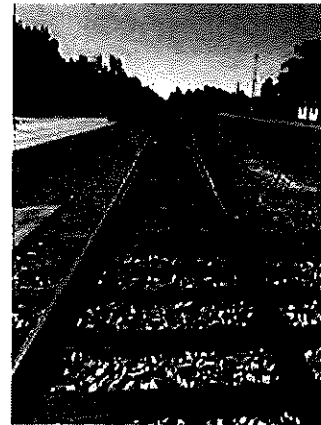
North of 146th Street Turnout – Poor timber on trailing end. Chipped switch point four inches long requires minor weld. Reverse move Check and Face measurements need correction. Frog point needs welded.

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South of Chestnut Street Turnout – Joints approaching frog are loose. Braces slightly loose. Loose frog bolts.

South Indiana Transportation Museum – Left hand switch point chipped – needs welded, Right hand point chipped 3 inches from point against stick rail. Mainline (normal) guard rail loose. Worn riser on frog needs welded.

North Indiana Transportation Museum – Frog point needs welded. Switch rods are rubbing against switch timber.



S. of Chestnut St Turnout



North Indiana Transportation Museum



South Wye Turnout

South Wye Turnout – Frog bolts are loose.

North Wye Turnout – Risers on frog need welded.



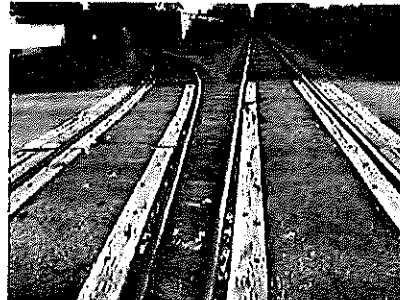
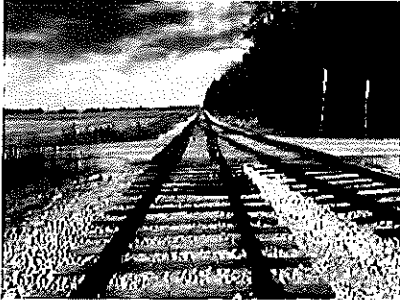
North Wye Turnout



North Wye Turnout

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North of 249th Street Turnout – Chipped left hand switch point needs welded. Frog has chip out of casting but that is not a traffic issue but should be monitored. Bars are broken on high and low side curve closure rails. Back to back gauge 53-1/8" on reverse side. Timber are generally poor.



North of County Line Road Turnout – Good Turnout

East Wye Turnout (off the Main Track) – Needs headblock timber (Switch machine timber) and point and closure rail timber.

Though the listing may alarm the reader of extensive problems throughout the turnouts on the line, on the contrary, the listing primarily depicts mild items that require correction for long term maintenance and stability. Serious items have been noted with replacements or out-of-service status. Generally the turnouts are in good condition.



East Wye Turnout

As a general note, and there is no switch points on the Main Track that have been recommended for replacement, when or if replacing worn switch points, it is typically prudent to replace the adjacent stock rail with a full-head, Class One relay or new rail with every installation.

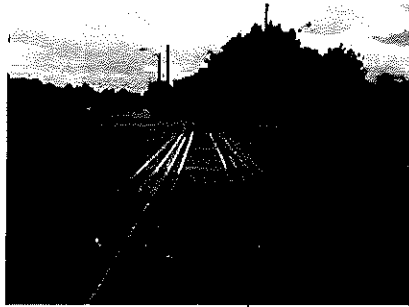
K. Grade Crossings

There are a total of 78 public grade crossings on the operating section of the Railroad as listed on the ITM Timetable No. 9, of which the Consultants inspected all the crossing from Milepost 5.1 through to State Route 28 in Tipton at MP 39.3. A further review was performed to evaluate possible options to reconnect to the Norfolk Southern Mainline at Independence Street at 39.6.

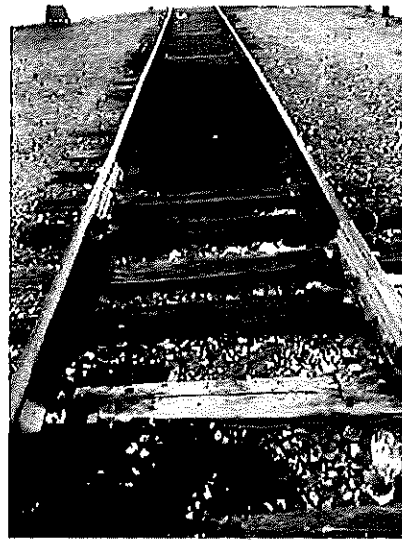
The grade crossings inspected on the line ranged from very good to very poor and are therefore listed singularly below. "Positive flangeways" as written for description below refer to flangeways provided by timber, rubber, concrete or steel where the pavement or surface material has a defined surface to pave against as opposed to just pavement with no defined structure to maintain the flangeway clearance.

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MP 5.1 - 38th Street The north approach to the crossing will require additional cross ties. Typical and similar to a production tie replacement gang at inner track guard rails over bridges, insulated joint ties that require replacement are often overlooked because of the fear of breaking the wires, especially if there is not a signal maintainer available to repair them. The track looks solid as evidenced by road traffic but there are numerous inside rubber flanges missing.



MP 5.1 - 38th Street



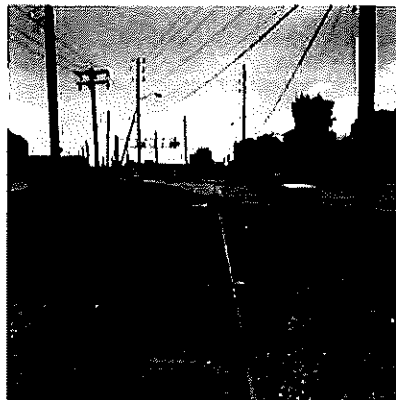
MP 5.1 - 38th Street

MP 6.2 - 46th Street Crossing like many more below do not have a positive flangeway. Track is relatively solid.



MP 6.2 - 46th Street

MP 6.4 - Keystone Avenue Poor alignment and drainage approaching crossing. Ties are fair in median and track looks solid under crossing.



MP 6.4 - Keystone Avenue

MP 6.7 - 52nd Street No positive flangeway grade crossing.

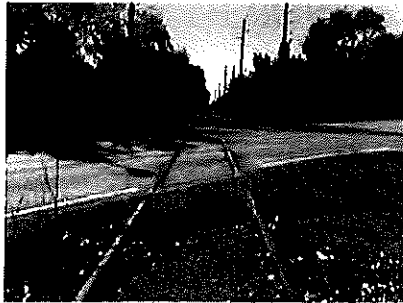


MP 6.7 - 52nd Street

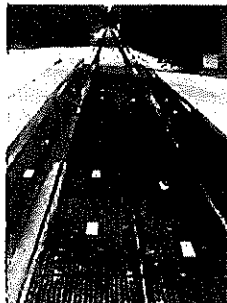
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MP 7.3 – 56th Street Previously described drainage location, no positive flangeway.

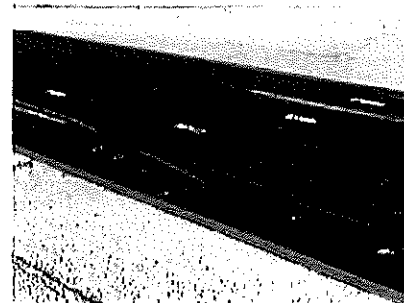
MP 8.0 – Kessler Blvd. No positive flangeway, track solid.



MP 8.0 – Kessler Blvd.



MP 8.5 – Allison Road



MP 8.5 – Allison Road

MP 8.5 – Allison Road Four panels are failing and should be removed and asphalt paved, track solid.

MP 8.7 – 62nd Street Both rails within the crossing are vertically bouncing with vehicle traffic, crossing must be fully replaced.

MP 9.5 – 65th Street Asphalt, no positive flangeway. Track solid.

MP 10.3 – 71st Street Asphalt, no positive flangeway. Track solid.

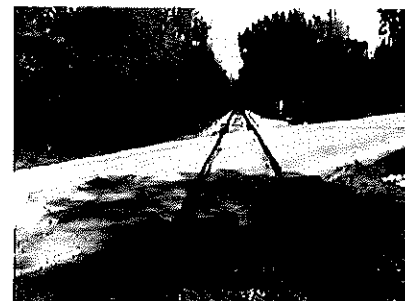
MP 11.0 – 75th Street Asphalt, no positive flangeway. Track solid.



MP 8.7 – 62nd Street



MP 10.3 – 71st Street



MP 11.0 – 75th Street

MP 11.2 – Knue Road Timber failing in the middle of the crossing. Lags need pulled and small hole needs cold patched with asphalt.

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MP 12.3 - 82nd Street Tub crossing mild misalignment in crossing at median. Broken up asphalt in flanges. Track appears solid.

MP 12.8 - 87th Street East rail is bouncing under traffic, approach alignment can be an issue for Class Two service. Crossing must be fully replaced. Site of cracked then welded compromise joints previously discussed.

MP 13.7 - 96th Street Concrete tub crossing, solid track.



MP 12.3 - 82nd Street



MP 12.8 - 87th Street



MP 13.7 - 96th Street

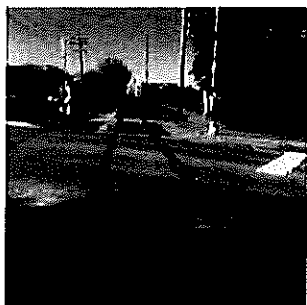
MP 16.5 - Lantern Road Asphalt, no positive flangeway.

MP 17.3 - 126th Street Broken up asphalt with no positive flangeway. Track appears solid.

MP 17.8 - 131st Street Asphalt, no positive flangeway. Some loose joints on approach. Painted so they are monitored by prior inspector.

MP 21.2 - Private Crossing Double track, timber flangeway, filled in with dirt and debris.

MP 21.3 - Chestnut Timber flangeway, some failing but track structure appears solid.



MP 16.5 - Lantern Road



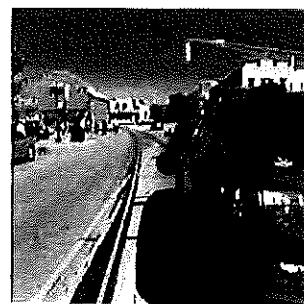
MP 17.3 - 126th Street



MP 21.3 - Chestnut

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MP 21.8 – Division Street through Logan Street Embedded street running track in concrete tubs with continuous welded rail. Sturdy track.



MP 21.8 – Division Street through Logan Street

MP 24.5 – 196th Street West rail is loose in the crossing and vibrating under vehicle traffic. Crossing requires full replacement of track and surface.

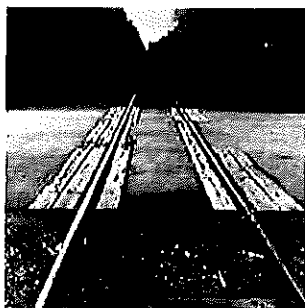
MP 25.5 – 206th Street Broken flangeway timber but crossing and track appear solid.

MP 26.6 – 216th Street Rail is bouncing under vehicle traffic. Crossing must be replaced.

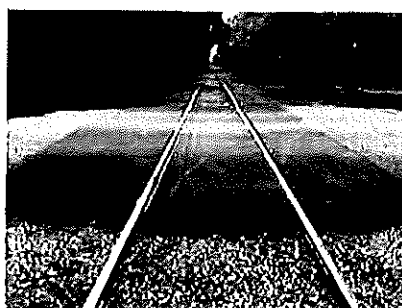
MP 28.1 – Wiley Street No flangeway. Asphalt pavement up to head of rail on gauge side. Will require a flangeway for Class Two Track.

MP 28.5 – Jackson Street Rail is bouncing under vehicle traffic. Crossing must be replaced in full.

MP 28.9 – Park Street Broken up timber crossing. Scheduled to be replaced in spring.



MP 24.5 – 196th Street



MP 28.1 – Wiley Street



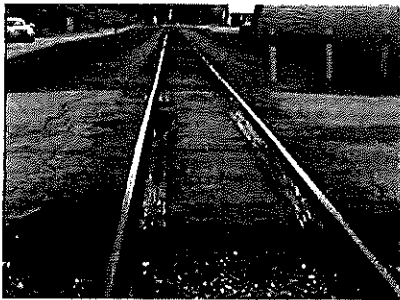
MP 28.9 – Park Street

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MP 31.7 – North Street Broken up flangeway timbers, may be considered for full replacement.

MP 34.1 – State Route 19 Good crossing – deserves a picture.

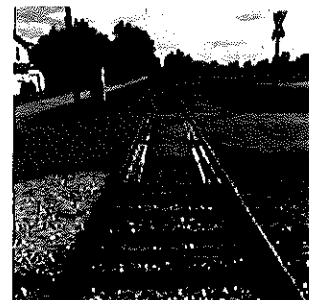
MP 34.3 – Kauffman Street Crossing has broken up flangeway timbers that should be removed. Timber can possibly be “kicked up” under train and/or vehicle traffic and do damage to the undercarriage of either. The track appears solid. Removal of the flangeway timber and accompanying asphalt paving should provide a flangeway for safer higher speed train traffic.



MP 31.7 – North Street



MP 34.1 – State Route 19

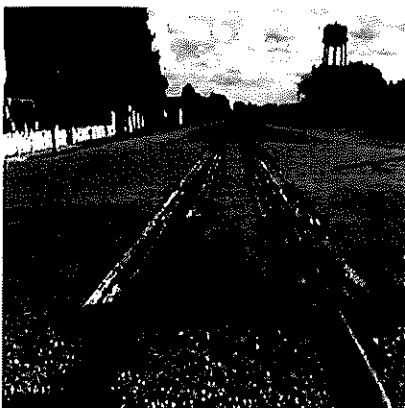


MP 34.3 – Kauffman St.

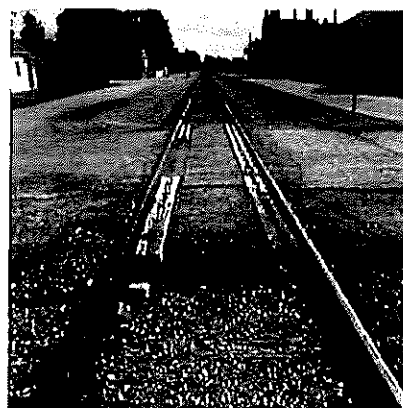
MP 34.4 – Main Street Similar to Kauffman Street, failing flangeway timbers should be removed and asphalt paving should provide flangeway.

MP 34.5 – Meridian Street Flangeway timber was removed and paved in as recommended above, but the flangeway was not provided. Also, lags that may be surfacing out of the broken timbers should be removed to avoid damaging vehicle traffic. Therefore, some timbers should be removed just because the lags are not securing them down.

MP 34.6 – County Line Road Flangeways must be provided for train movements.



MP 34.4 – Main Street



MP 34.5 – Meridian Street



MP 34.6 – County Line Road

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MP 36.1 – County Route 450 Gauge is 58” within crossing and has been tar and chipped filling in the flangeways. Crossing track and surface must be fully replaced.

MP 36.6 – County Route 400 Flangeways must be restored where crossing was tar and chipped over.

MP 37.1 – County Route 350 Flangeways must be restored where crossing was tar and chipped over.



MP 36.1 – County Route 450

The listing of the public grade crossings as depicted on the ITM Timetable No. 9 is included in Attachment I.

L. Track Gauge

There were no FRA wide gauge violations found on the inspection pertaining to Class One Track. Some locations that were pushing the limit and should be monitored or corrected are listed below:

The south end approach to embedded street running track at Division Street had 57-1/2” gauge on west rail and compromise joint. Not pushing.

Just south of Bridge 22.62, 57-5/8” was on the high side insulated joint approaching the bridge.

County Route 450 S measures 58” gauge within the crossing.

III. CONNECTION TO NORFOLK SOUTHERN RAILWAY IN TIPTON

A. General Discussion

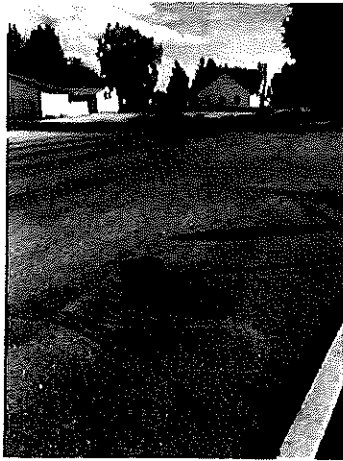
As discussed above, included in the Report’s Scope of Work is to provide options for reconnecting the HHPA to Norfolk Southern Railway on the northern end in Tipton, Indiana for access into the general railroad freight system.

Attachment VI – Connection to NS Tipton – Conceptual Plans and Options, the four sheets depict two options to connect to Norfolk Southern Railway in Tipton and Sheets 3 and 4 show the work required to rebuild the approach track to the options. The work in Sheets 3 and 4 is required for either option.

As a general description, the present termination of the track in Tipton ends at the former grade crossing at Washington Street. There the track is removed through Washington Street, covered with vegetation and grass between Washington and North Streets,

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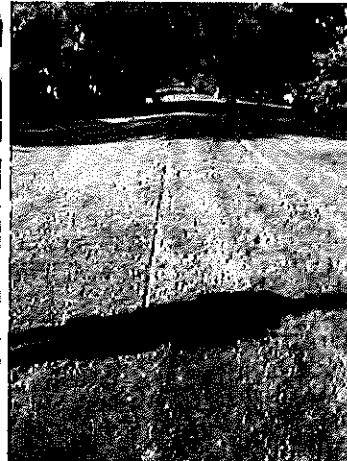
removed at North Street and Independence Streets, then partially or completely covered with grass and dirt through to Main Street. The track appears to be removed under Main Street.



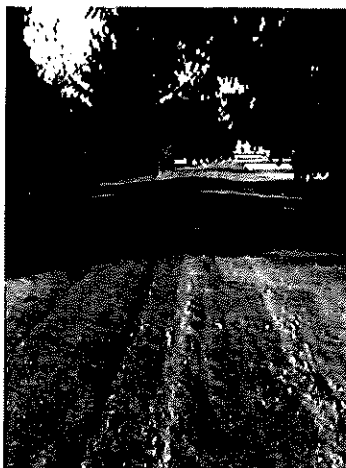
Facing North through
Washington Street



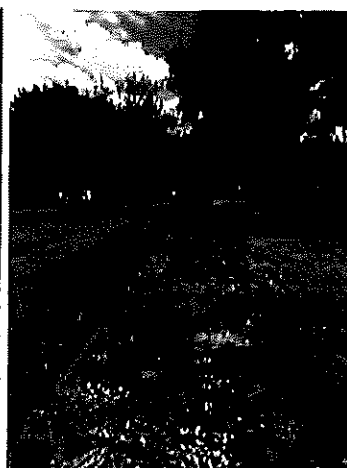
Facing north through
Independence Street



Facing north of
Independence Street



Facing south toward
Independence Street



Facing south from Main
Street



Facing north into Main
Street

As the pictures show there is some considerable work to perform to rebuild the track and grade crossings just to access the Norfolk Southern Mainline. As a general note, the track covered with dirt and grass is probably not reusable. Typically rail and other track materials (OTM) will corrode when buried in dirt and debris. If the rail is adequate it can be utilized as inventory for siding and spur tracks.

At the end of the inspection on the south end and to set the hy-rail truck off the track at Sutherland Avenue, the side track adjacent to the Mainline was observed and was built with 110# rail which may be considered as "seed" rail for restoring the track on the north

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end at Tipton. The plates and joint bars were present and the length may make the rebuild less costly if the side track "run-around" is not deemed necessary. The rail, plates and joint bars looked to be in good enough condition to at least be considered for reuse. The No. 11 turnout on the north end of the siding was 9020 and also could be considered for reuse for a replacement of some of the out-of-service frogs recommended for replacement (56th and maybe 46th Street turnouts).

B. Option One – Reconstructing Original Connection

As shown on the Track Charts (Attachment I) and the Valuation Map (Attachment VI after Sheet Four) for Tipton the original connection had the track to track diamond crossing at grade within the Main Street grade crossing. The pictures above show the probable removal of the track and the replacement of the pavement on Main Street approaching the NS Mainline Track. Based on the track chart and Val map, it is very apparent the NS Mainline interlocking has been significantly modified.

To reconnect the HHPA line to NS in Option One from the Match Point, a long diagonal grade crossing through Main Street will be required with a track to track crossing at grade with the NS Main and an additional 290 feet of grade crossing and track to connect to the east wye track accessing the NS yard to the north with a Number 8 turnout. The construction of the No. 8 turnout will require realignment of the East Wye Track which may or may not impact the second crossing north of the diamond on Main Street.

The No. 8 turnout will probably be balked at by NS because of its tighter curvature, but the east Wye track approaching the proposed turnout is sharper than the curvature in the turnout and it fits well into the location.

Another limiting condition that creates a red-flag even in the Consultant's mind, is the track "diamond" crossing within the limits of the vehicle grade crossing. Diamonds are very hard to maintain on their own and require extensive attention. A diamond that must have a "retrofitted" surface material to maintain vehicle traffic would be that much harder to maintain. The other issue is the crisscross intersecting flangeways for the two-way train traffic creates an unpassable motorcycle hazard on the roadway.

It is the opinion of the Consultant that though the same connection or similar connection was present in the past, this Option One is not a recommended alignment to present to Norfolk Southern.

C. Option Two – Constructing Diamond Avoiding the Main Str. Grade Crossing

Sheet Two of Four shows Option Two whereby the connection avoids the diamond track crossover located within the Main Street grade crossing. This alignment steers away from the historic alignment with reverse curves to access and cross the NS main roughly 15 feet from the Main Street grade crossing. The connection is actually shorter in length and again avoids the track diamond in the grade crossing. The track construction still

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requires a grade crossing on the north side of the NS Main and again probably will impact the East Wye Track grade crossing over Main Street as well.

Based on what can be discerned on the attached Val Map for the previous Tipton connection, the proposed alignment to cross the NS Main 15 feet from the roadway in Option Two, will probably require acquisition of adjacent property. There were as many as four tracks within that right-of-way approaching the NS Main in the past, depending on which prior track the ROW is referenced, there may or may not be some property acquisition required.

IV. CLASS TWO LEVEL OF SERVICE TRACK REHABILITATION PLAN

A. General - Estimate Description

The following Rehabilitation Plan concentrates on bringing the HHPA Main Line Track to a reliable Class Two level of track and service. Though there will be locations that will not permit Class Two speeds for freight and passenger trains, all track will be brought up to Class Two Track safety standards. The Plan includes an Estimate of Probable Costs in Attachment V. As a general note, the estimates for cost and quantity are conservative, allowing for minor changes in the scope of work for any one phase. The estimates should cover the work proposed that needs to be done within the five year time frame barring any unforeseen increase spikes in pricing. Other considerations will be defined below in the applicable sections.

The Switch Timber Replacement – Scope of Work – Bill of Material, Attachment IV is a support document for quantities and lengths of the switch timber replacement and should be used in conjunction with the Rehabilitation Plan. Actual lengths of the specific defective switch timber were not measured during the inspection but have been estimated based on the inspection reports. The Switch Timber Bill of Material will require verification of timber lengths prior to receiving bids for the work.

The cost estimate is presented with Priority One on the south end from Milepost 16.5 in Fishers to Milepost 5.1 and Priority Two from Fishers north to State Route 28 (Milepost 39.3). Input regarding priority of work was discussed with Mrs. Klopfenstein and Mr. Schwartz and confirmed as they saw fit. Economies of volume can be realized if the work is staged with one contractor doing all or the majority of each phase of the prioritized work over a period of time and sufficient funding is in place. The cost estimate takes into account these economies.

Estimated lengths of the grade crossings were taken from scaling off of Google Earth and have no survey backup or measured in the field data to support the estimated quantity. Grade crossing that were candidates for total replacement were estimated by the lengths of the timber, rubber or concrete panels or tubs that existed in the present construction and were verified through the scaling off Google Earth, thus the Plan Estimate is considered "Order of Magnitude".

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As a note, all grade crossings that required replacement considered only full width timber instead of rubber flange or concrete panels or tubs for the replacement except the rubber flange recommended for the Main Street connection to NS in Tipton. Full width timber grade crossings span the width of the crossing without asphalt paving between rails in the gauge. To lessen the responsibility of the Railroad to pave broken up pavement within the gauge and the roughly two feet from near rail on the outside of the track, the Consultant considers the full width timber option as less demanding on later budgets and reduces public complaints. The rubber flange and asphalt grade crossing on Main Street in Tipton is conducive to whatever Option One would be required to provide an adequate grade crossing surface approaching and exiting the diamond track and vehicle crossing at grade.

The Order of Magnitude - Estimate of Probable Costs in Attachment V has been separated into two categories based on priority and two additional categories for the options to connect to Norfolk Southern in the north at Tipton. Column Three which refers to the Connection to NS - South Track Rehabilitation refers to the track removed or grown over with vegetation which must be rebuilt to get to the Sheet Match Points for both Options.

B. Category - Estimate Description

Items 1, 2 and 3 refer to the crosstie replacement program which includes the replacement of crossties based on the one-hundred tie count sampling and from what was visually inspected. Tie replacements at specific locations have been generally estimated and should be verified and marked for replacement prior or subsequent to receiving bids for the work. The overall tie replacement program concentrates on supporting joints, breaking up defective tie clusters, providing adequate approaches to turnouts and prioritizing high-percentage defective locations. Locations where the track is covered with dirt and debris or gravel private crossings need to be cleaned to a level of adequacy that the ties can be inspected for replacement. Most locations can be cleaned relatively easily utilizing a track regulator brought on by the track contractor doing the work. The debris "windrow" however would still have to be cleaned up and removed upon completion. Other locations will require carefully digging out the dirt and debris by hand or with the help of a back-hoe. A contingency is afforded in the cost estimate to account for missing or damaged plate replacement. Whatever that is not used in the replacement program can be inventoried for the Priority Two or the next programmed project.

The eight crosstie counts from Milepost 5.1 to 16.5 (11.4 miles) significantly varied as discussed above. Numerous defective clusters were identified and defective joint ties were recorded in the prior 4,849 tie installation section. After deducting bridges, turnouts and grade crossings the 11.4 miles was reduced to 57,720 feet of tie installation trackage or 10.9 miles. In order to accommodate the varied percentages of the eight samplings taken and estimate a conservative tie count per mile in the prior tie installation section the Consultant chose to error on the side of conservatism and recommends installing 275 ties per mile (10.9) or roughly 3000.

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The recommended tie count on the MP 16.5 through to MP 39.3 at State Route 28 with a total footage deduction of 5,152 track feet for bridges, turnouts and grade crossings is 750 ties per mile for 21.8 miles. The "rounded up" tie count per mile allows for a safety tie installation on the south, north and east Wye Tracks. The eleven tie counts were relatively consistent with defective and 5 year percentages which permitted an easier tie installation amount to satisfy Class Two track level of service. The defective and 5 year tie combination will be adequately sustained for a period of "a reasonable length of time" as discussed above. It must be understood however, the tie installation cycles will have to be implemented as ties continue to deteriorate over time and service. Twenty five to thirty mile per hour track under only passenger service will typically deteriorate less rapidly than freight service at 25 miles per hour.

Switch timber counts listed on the Switch Timber Replacement – Scope of Work are also conservative and require verification and actual marking.

Item 5 – Brush Cutting and Vegetation Control is specific to what was described in the above narrative and does not include the annual weed spraying that should be done on the entire property every year as has been the recent history. It is evident that the current weed spraying contractor has been performing a good job and probably should be retained to continue the annual spraying program. Track contractors would probably sub-out this work and legitimately charge ten percent mark-up. The estimate includes a general, one time pricing to cut the encroaching brush on the line from 15 feet both sides of centerline track six inches to twenty-five feet above top of rail.

Incorporated into the brush cutting program should be identifying and cutting dead and leaning trees that are outside the 15 foot cutting limits but still within the right-of-way that are probably going to fall over the track in the near future. Refer to the picture on Page 7 of the dead tree about to fall at approximately Milepost 13.5.

Items 6, 7 and 8 on the Estimate considers a full package of tightening all joints on the Mainline Track. The items cover replacing broken, missing and frozen bolts that need to be torch burned and replaced. The estimate also includes the Contractor furnishing replacement bars for broken or cracked joint bars that will be encountered during the tightening work. Locations that are scheduled for out-of-face surfacing will probably end up with more broken bars than originally encountered without the surfacing, because of the lighter 9020# rail section. The tightening and replacement sequence should proceed after the track has been raised. The replacement joint bar contingency was estimated as fairly high based on the inspection. Again surplus bars may be inventoried or held by the track contractor providing there is a "solid" quantity identification that bars have been actually replaced.

The miscellaneous rail replacement Item 9 considers replacement of damaged or broken rails, rails that break in the surfacing program due to the light rail section or the removal of "Dutchman".

Continuous rail replacement (Item 10) are longer sections of track that may have numerous curve or severely tread worn rail scheduled for a continuous replacement.

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There were no locations identified on this inspection that required the removal of significant lengths of curve or tread worn rail. It is the opinion of the Consultant to recommend the replacement of the "beaded" stainless steel rail identified on the southern end of the line. The rail was, or appeared to be, arc torch cut on the center of the head for the application of the welded stainless. The Consultant does not know the maintenance activity of the specific rail in question but believes the integrity of the rail is subject and recommends its replacement.

The cost of the replacement is included in the Cost Estimate. However, the former track speed through that location was 15 miles per hour which impacts the rail significantly less than 25 miles per hour for passenger and freight. Proposed speed at the end of the line for the fair-ground traffic may realistically be only 10 miles per hour operationally. The rail can be monitored by visual inspection with the replacement deferred until the second phase thus relieving the initial investment of Phase One by the estimated \$229,000. If the rail begins to fail, the Phase Two work would include that replacement.

The FRA requires a periodic continuous search for internal defects on Classes 3 and above track. If the rail does not fail there is still an option to have it tested for internal defects to better determine its integrity.

Discussed above regarding the siding and the reuse of the 110# rail, bars and plates, it is anticipated in the future that the need for a run-around or the flexibility of having the track present operationally outweighs the benefit of utilizing the rail and accompanying OTM for relaying into the Mainline Track. Therefore the rail for the rail replacement will be estimated to be furnished by the contractor. There were no other long continuous rail replacements identified in the inspection.

The possibility of reusing the replaced subject "bead" rail, in the opinion of the Consultant, is not an option for sidings or replacement rails in ten mile per hour sections. The option to reuse the rail with limitations on where it can be used, sidings and not the Mainline Track for example, can be more difficult to adhere to in reality and it may be more simple (and safe) to sell the rail as scrap and credit the project costs.

Items 11A through 11F account for associated work at grade crossings. Items 11A, B and C entail construction or renewal of gravel private crossings, crossings to be replaced with full width timber and rubber flangeway both with asphalt pavement. Item 11D is patching asphalt at identified crossings and Item 11E consists of cutting in a flangeway on existing crossings.

The Consultant discussed the logistics and utilization of skid steers with milling attachments, jack hammering and specific large scale milling equipment. Generally it is up to the contractor to determine the most economic and productive equipment to use in this repair. Milling machines with carbide tips will require precision to avoid hitting the rail. Four and two foot wide milling machines are an option which could mill the gauge asphalt down and repave the gauge with planking embedded in the asphalt to provide a direct paving barrier and then be removed after the asphalt cools. There is an 18 inch milling attachment to a skid steer whereby the head can be tilted to provide a one or two

**Hoosier Heritage Port Authority Railroad
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inch paving notch into the existing asphalt and be angled to maintain the minimum 3 inches deep by 3 inches wide at the surface.

Milling machines that can mill out the gauge ought to be utilized on the field surface if the asphalt is breaking out adjacent to the head of the rail. No flangeway is necessary obviously, but the crossing can be fully repaired at that time if necessary. The work may or may not require a detour but flagging traffic control will be an absolute.

Item 11F – Relocation of Insulated Joints on Approach Circuits is an allowance item to accommodate lengthening the circuit starts if required on grade crossings equipped with warning devices that have been installed at distances for the slower speeds.

The conservative allowance is based on relocating all the insulated joints in the higher speed locations outside former Yard Limits as shown on the historic track charts. It should be noted that the majority of the insulated joints on the line were older and may not require relocation. The Consultant found it prudent however to include the cost of the relocation in the Cost Estimate.

Verification of required sight distances at grade crossings without warning devices that may have become obstructed with buildings, signs, vegetation, etc. will be required and approved by the appropriate Authorities.

Items 13, 14 and 15 are items for spot and out-of-face surfacing track and turnouts after the ties and timbers have been replaced or at heavily utilized areas. Out-of-Face surfacing is raising, lining, surfacing and dressing the track with a minimum of a one-inch raise. The "spot surfacing" Item does not perform a consistent "raise" over all the track, but it brings up low spots to the general elevation of the track around it. The frequency of the tie renewals and the increased speed of the train service has dictated that a full out-of-face surfacing cycle be initiated to accommodate significant loss of surface and alignment due to the heavy tie replacement at those (all) locations.

The rebuild track item (Item 16) entails removing the existing track and excavating enough material to allow for installing six inches of sub-ballast and six inches of ballast underneath the ties at the new track elevation. The pricing includes a complete rebuild with new or Class One Relay rail, bars and plates, new 7" x 9" ties and all the required surfacing and alignment for a new or rebuilt track.

There have been few gauge problems identified in the two day track inspection, however a "contingency" item is included in the Rehabilitation Plan. This Item is a place-holder should extensive gauging be identified. Most locations identified with "widening" gauge were high-side joints where a collection of tie replacements would repair the locations.

There were no full turnouts that were considered for complete reconstruction. Rebuild Number 8 Turnout (Item 18A) has also been included in the Estimate as a placeholder should new customers be identified if the freight operation resumes.

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Items 19 through 24 are self-explanatory and cover work that should be done on a priority basis when track work commences on the property or before. Replacing Switch Points and Stock Rails have not been identified but is on the Estimate as a placeholder. Profile Grinding is recommended on all turnouts. For safety and longevity of switch components the profile grinding should be implemented promptly and includes making any necessary adjustments to the switch stand to close the points after flow has been ground off. Item 21 Miscellaneous Turnout Repairs is an allowance item for work that is required and has been specifically itemized above.

Since "drainage, drainage, drainage" is a cliché on Railroads and it wouldn't be proper for this Report to omit this most important issue of maintaining track, Item 25 - Install Drainage Facilities is an allowance item that refers to correcting the drainage at subject grade crossings, the installation of a sluice under the Main Track south of 96th Street, and cribbing the track under the Overhead bridge at I-69.

C. Class Two Track Speed Locations

The Consultant has performed a cursory review of the Valuation Maps and track charts from a simple track perspective to identify track sections for the Class Two speed. The existing track charts identify track speeds from the past and may or may not be duplicated after the track has been rehabilitated.

It must be understood that actual field measurements of superelevation on open deck bridges as well as existing grade crossings on curves need to be measured and verified to accommodate the higher track speeds. Though the track charts reveal speed limits on the Mainline Track, it is not a "given" that grade crossings and new bridge timber were dapped and constructed to accommodate the earlier speeds. The out-of-face surfacing program in the Rehabilitation effort can adjust the track for the higher speeds at most locations but the fixed bridges and grade crossings may limit the speeds through those areas. Circuit starts at public grade crossings that are protected with flasher warning devices will probably require relocation and have an allowance in the cost estimate for that work.

D. Class Two Track Rehabilitation Plan - Estimate of Probable Costs

The estimated order of magnitude cost to complete the HHPA Class Two Track Rehabilitation Plan is as follows:

Phase One – Rehabilitate Section 5.1 to 16.5	\$1,065,000
Phase Two – Rehabilitate Section 16.5 to 39.3	\$2,650,000
Connection to NS – HHPA Track Rehabilitation	\$ 651,000
Connection to NS Option 1 -	\$ 841,000
Connection to NS Option 2 -	\$ 732,000

The total Order of Magnitude – Estimate of Probable Costs for the two phased HHPA Class Two Track Rehabilitation Plan is \$3,715,000.

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The Consultant wishes to thank Mrs. Rhonda Klopfenstein and Mr. Glen Schwartz for their assistance on the property throughout the inspection.

The End

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 117X)

**NORFOLK AND WESTERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
BETWEEN INDIANAPOLIS AND TIPTON IN MARION,
HAMILTON, AND TIPTON COUNTIES, IND.**

**CONSOLIDATED REPLY IN OPPOSITON TO THE MOTION TO VACATE NITUS
AND TO REACTIVATE RAIL SERVICE, AND TO THE VERIFIED MOTION FOR
PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)**

EXHIBIT D

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36137

**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
-- PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

REPLY TO LATE-FILED COMMENTS

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**ATTORNEY FOR CITY OF FISHERS,
CITY OF NOBLESVILLE, AND
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Dated: January 19, 2018

Certain of the post-deadline filings do not warrant a response from the Owners here. Specifically, the Owners previously responded to the substance of STNKP's November 2, 2017 Motion to Suspend and Investigate, and the Board denied STNKP's motion in its January 5 Order. Similarly, Kraatz' November 6, 2017 Motion to Extend the Comments Deadline has been denied, so a further reply is unnecessary. Additionally, the Owners already have responded to their satisfaction to Kitchell's late filings of October 24, 2017, and November 6, 2017, by way of letter replies on October 27, 2017 and November 8, 2017, respectively. None of the other late filings to which the Owners will respond here, aside from the USRP/ITM joint comment, warrant extensive discussion.

Quikrete cares more about the "fair train" and trail safety than it does about possible freight rail service restoration

Quikrete filed a one-page letter comment addressed to Acting Chairman Ann Begeman and posted to the Board's website as of October 13, 2017. Like other would-be shippers on the line, Quikrete has intervened without legal counsel (suggesting something of the limited interest it truly has in the possible restoration of rail service). Quikrete acknowledges that it stopped using rail service over the Line some 15 years ago, resorting to the use of trucks exclusively thereafter. Quikrete never claims to have reached out to the Owners over the past several years to see rail service on the Line resume, and the Owners are unaware of any such expressions of interest from Quikrete prior to the initiation of this proceeding. Quikrete's highly-qualified statement of interest in the restoration of rail service ("if competitive rates were available") takes up two lines of Quikrete's one-page comment, and Quikrete never even estimates how much of its truck traffic it would or could divert to rail if service were restored.

More telling is that Quikrete devotes more than double the space in its full-page comments to lamenting the loss of the "fair train" – the passenger excursion trains operated

periodically in the past by ITM. Quikrete thereby reveals that its principal motivation has little if anything to do with freight service options. Finally, Quikrete commits far more text to trail safety concerns in the event of trails use than it does to its rail service needs. In short, Quikrete's asserted interest in rail service is dubious and speculative when measured against the issues to which it devoted more attention – excursion trains and trails use safety.

Indiana Transportation Museum and U.S. Rail Corporation ignore potentially guiding precedent regarding the appropriate path to trails use

Aside from being woefully and inexplicably late, the November 13, 2017 joint comments of ITM/USRC (the “Joint Comments”) are useful to a point.² ITM and USRC implicitly concede, in keeping with the Owners’ past filings, that the Line is subject to ongoing Board jurisdiction as a line of railroad. They also implicitly concede that the Owners are currently subject to a “blanket exemption” (Joint Comments at 4), again as the Owners consistently have contended. ITM and USRC also allow that a path to a possible trails use outcome would be to follow the regulatory formula of Caldwell Railroad Commission – Exemption from Subtitle IV, Docket No. FD 32659 (Sub-No. 2) (STB served Sep. 8, 2015) (“Caldwell”). However, unlike the Owners, ITM and USRC insist that the Caldwell approach is *the* path to trails use. Moreover, while ITM and USRC seem generally to support the Owner’s request for partial revocation, ITM and USRC argue that the Owners’ future, post-revocation use of the Board’s abandonment procedures must be subject to the offer of financial assistance (“OFA”) provisions of 49 U.S.C. § 10904 (and the corresponding regulations at 49 C.F.R. § 1152.27), from which the Owners specifically requested to remain exempt.

² ITM/USRC are, incidentally, the only interested parties, aside from the Owners, to have retained experienced railroad regulatory counsel.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36137

**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
-- PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

RESPONSE TO COMMENTS

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**ATTORNEY FOR CITY OF FISHERS,
CITY OF NOBLESVILLE, AND
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Dated: October 23, 2017

counsel. Two of the potential freight customers – Stone Spectrum (“Stone”) and Crown Technology, Inc. (“Crown”) – have purported to request or demand service. Both incorrectly assume that either the Owners or HHPA, or both, are subject to the common carrier obligation set forth at 49 U.S.C. § 11101.

The Owners admit that they are unsure of what to make of the recently-proffered freight shipper filings. While each would-be shipper opposes interim trails use, the filings fail to demonstrate that the Board should order the Owners to restore the Nickel Plate Line to service and provide for common carrier freight transportation.¹¹ If, on the other hand, the requests or demands for service are simply to be taken at face value, then the Owners respond that they do not have any such common carrier obligation, and they respectfully decline for that reason to arrange for the restoration of freight service.

Beyond that, the Stone, Crown, and Kokomo Grain (“Kokomo”) letter filings are reminiscent of the sort of speculative suggestions that the Board and practitioners regularly appearing before it encounter in railroad line abandonment proceedings.¹² These industry’s

¹¹ It may be that these businesses and those who likely have resorted to recruiting them to participate in this proceeding are hoping to use these bogus service demands as a (misinformed) basis for later invalidating the Owners’ possible future invocation of the Board’s two-year-out-of-service abandonment procedures.

¹² See, e.g., Mid-Michigan R.R., Inc. – Abandonment Exemption – in Kent, Ionia, & Montcalm Counties, MI, AB-364 (Sub-No. 14X) (STB served Sep. 26, 2008), slip op. at 4-5 (“In many abandonment cases, shipper or community groups base their opposition on potential development of new business. But speculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment authorization. See CSX Transportation, Inc. – Abandonment Exemption – In Bell County, KY and Claiborne County, TN, Docket No. AB-55 (Sub-No. 478X), slip op. at 5-6 (ICC served Aug. 5, 1994). See also CSX Transportation, Inc. – Abandonment – Between Bloomington and Montezuma, In Parke County, IN, Docket No. AB-55 (Sub-No. 486), slip op. at 9-10 (STB served Sept. 13, 2002), aff’d, Montezuma Grain Co., LLP v. STB, 339 F.3d 535 (7th Cir. 2003). Here, as discussed above, [the shipper’s] planned use of the rail line is highly speculative, and, given that the line has carried no traffic at all for years, the rail traffic that [it] claims to anticipate is supported neither by the record before us nor by the line’s history”); Union Pac. R.R. Co. –

claims that they “require” freight service are not credible, and the limited efforts of each to press its case for railroad service reveals its true degree of interest. Having emerged so late in this proceeding, each of the three were likely recruited at the last minute as make-weights by other trails use opponents who recognize the deficiencies in their excursion train-centric arguments. The Owners do not recall any of them – and Stone and Crown are established businesses in the community – having contacted HHPA or the municipalities in the past to press for the restoration of railroad service. Moreover, the traffic claims are simply too qualified to be credible.¹³ Finally, none of the three attempts to prove that their limited traffic prospects would make freight service on the line remunerative.¹⁴

Kokomo, evidently not an active industry along the Nickel Plate Line, suggests that the line “could generate as many as 1,900 carloads per year” of agricultural commodities if freight service were to resume. The Owners, however, understand that such grain traffic would depend upon the presence of a suitable elevator or similar such truck-to-rail transfer facility along

Discontinuance – in Utah County, Utah, AB-33 (Sub-No. 209) (STB served Jan. 2, 2008), slip op. at 3.

¹³ Stone says it wants to shift “some” of its stone traffic from truck to rail, estimating that it would ship “100 + carloads” of stone traffic (presumably per year). Offering no specifics, Stone claims to have been “attempting to establish freight service for nearly four years.” Letter Comments of Stone Spectrum (filed October 2, 2016). (Again, the Owners are unaware of any such “attempts.”) Stone gives no traffic commitments; does not explain why or how, at such modest carload volumes, it would realize a cost savings over trucks; and never bothers to prove that its traffic would be remunerative to a rail operator. In similar fashion, Crown’s one-page letter comments, which track the format and content of Stone’s, are decidedly vague and non-committal. Crown claims it “could” receive and ship certain liquids and dry materials, adding that it “would take some time [9 months at the outset] to shift traffic to rail,” depending upon adjustments to vendor “supply chains.” Letter Comments of Crown Technology, Inc. (filed October 5, 2017).

¹⁴ While the Board might consider whether excursion train revenues could compensate for modest freight service income (if any freight traffic happened to materialize), the Owners do not intend to allow for the resumption of excursion operations on the southern end of the Nickel Plate Line, and, of course, the Board has no authority to compel the Owners to host intrastate excursion train service.

the line, and Kokomo does not indicate that any such facility now exists or is to be built. Also, while Kokomo claims that restored rail service on the Nickel Plate Line would be convenient for local grain producers, it appears that this grain is moving today to existing elevators on other rail lines, and that the carload volumes that Nickel Plate Line traffic theoretically would generate would result in traffic diversions from other lines (possibly including other short lines in the area) which appear to be handling local grain harvests satisfactorily. Without any commitment to locate a loading facility on the Nickel Plate Line nor any traffic guarantee, Kokomo's self-serving estimate of 1,900 carloads is no more meaningful than two or 200,000 carloads.

Re-regulating (if Necessary) with Precision under Section 10502

If the Owners must proceed under the three-step process, they have requested that their exemption be lifted only so far as is necessary to enable them to arrive at an interim trails use arrangement, no more and no less. As the Owners pointed out in their Revocation Petition:

In assessing whether to revoke an exemption – either entirely or, as here, in limited part – the Board must consider the statutory standard set forth at 49 U.S.C. § 10502(d), which provides that the agency may revoke an exemption “when it finds that application in whole or in part of a provision of this part to the person, class or transportation is necessary to carry out the transportation policy of [49 U.S.C. § 10101].” Also, “[t]he Board will revoke an exemption if a petitioner has demonstrated conduct that frustrates the [rail transportation policy] and the Board has determined that the reinstated regulatory provisions could ameliorate the alleged harms.” Caldwell R.R. Commission – Exemption from 49 U.S.C. Subtitle IV, Docket No. FD 32659 (Sub-No. 1) (STB served Nov. 26, 2014), slip op. at 2.

Revocation Petition at 7. The Owners have shown in earlier filings that such limited relief would advance the rail transportation policy of section 10101.

The trails use opponents manifest divergent views on the Owners' Revocation Petition. Many argue that the Revocation Petition should be denied. But implicit in that line of argument is that the Owners should remain fully exempt – an outcome the trails use opponents probably do not want. It is not at all clear what denial of the partial revocation request would