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BOARD OF SUPERVISORS

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February 28, 2006

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ISAC Litigation Committee
c/o Executive Director Bill Peterson
ISAC
501 SW 7th Street, Ste. Q
Des Moines, IA 50309

RE: Requesting ISAC's participation in litigation between Washington County and IC&E Railroad

Dear Mr. Peterson:

Washington County has been involved in litigation with the IC&E Railroad (formerly I&M Rail Link) since 2002 over the replacement of four railway bridges in our county. The outcome of this lawsuit will directly impact the majority of counties in the state of Iowa by setting a precedent for how railroads and counties will interact on this issue. Washington County is requesting the assistance of the Iowa State Association of Counties in paying for the legal expenses incurred with this lawsuit.

Case Background

Washington County has four railway bridges (two underpasses and two overpasses) that are functionally obsolete, beyond their useful life and the site of reoccurring accidents. The bridges all cross farm-to-market roads and have created significant choke points in our road system because of the vehicle restrictions (height and weight limits) they impose. These bridges are owned, operated, and maintained exclusively by the railroad. The cost of replacing the bridges is more than \$6,000,000. Prior to filing suit, Washington County pursued negotiations with the railroad to try to reach a compromise in replacing the structures but was unsuccessful.

In addition, one of the overpasses (a timber trestle bridge) was destroyed by fire in 2002. The railroad refused to allow Washington County to construct a temporary grade crossing and refused to construct a new bridge that would meet current bridge design standards. This has created an 8-mile detour for landowners.

Court Actions

In January of 2002 Washington County filed a petition with the Department of Inspection and Appeals for a contested case hearing to compel the railroad to pay for the cost of replacing the bridges under Iowa Code Sections 327F.2 and 327G.17. The railroad appealed to federal district court claiming that since their business involved interstate commerce state law did not apply. The federal district court judge ruled that federal law did not preempt the State of Iowa in this case. The railroad appealed the ruling, but was denied by the 8th circuit court. Our hearing on the original petition before an administrative law judge is scheduled for the end of April.

Impact on Other Counties in Iowa

Already, this case has set a precedent for all counties with railroads in Iowa. The ruling in federal district court establishes that federal law does not take precedence over state law in matters dealing with this Iowa Code section as it applies to railroad companies in Iowa. Any county wishing to pursue similar legal action has this ruling already established. The outcome of the hearing in April will establish a firm precedent for other counties with similar railroad crossing issues.

Attached with this letter is a map showing the number of locations where county roads intersect railroad crossings and highlights the counties that will be directly affected by this case. This map highlights the following facts:

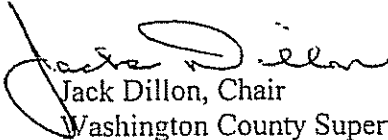
- There are 91 counties with railroad crossings in them.
- There are 2,561 railroad crossings on the county road system in Iowa.
- 63 counties have railroad/county bridges (overpasses and underpasses).
- There are 141 railroad overpasses and 135 underpasses on county roads in Iowa.

Clearly, with over 2500 crossings, 275 railroad bridges, and 91 counties being directly affected, this case has far reaching implications. Additionally, it is worth noting that in 2002 the Union Pacific (UP) and the Canadian National Railway Corporations attempted to intervene in the case on the basis that "they have a large number of old bridges within the state of Iowa that may in the future involve identical issues raised in this contested case hearing." Fortunately, their petition was denied, but this indicates the awareness of other railroad companies to the potential impact of this case. Currently there are other counties who are being stonewalled on similar issues as they await the outcome of this case.


ISAC's Role

Washington County has an established legal and consulting team working on this case. We are not seeking legal advice or requesting additional council. We are requesting that ISAC become involved to assist us in asking the other counties to help support us financially in this case. The County Engineers Executive Board has passed a resolution of support on this request. We are not seeking funding for construction, survey, or bridge design but only for legal and consulting costs necessary to complete the case.

Sincerely,


Jack Dillon, Chair
Washington County Supervisor

Sincerely,


David Patterson, PE
Washington County Engineer

Cc: Douglas Fulton, Bradshaw Law Firm
John Calhoun, Calhoun-Burns, Assoc.
Mike McClain, Iowa County Engineers Association
Barb Edmondson, Washington County Attorney
Bill Fredrick, Washington County Auditor
Robert Sperry, Story County Engineer
Royce Fichtner, Marshall County Engineer
✓ David Vestal, ISAC General Counsel