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SERVICE DATE – LATE RELEASE SEPTEMBER 24, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 310X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN POLK  
COUNTY, IOWA

Decided: September 24, 2012

This decision reopens this proceeding to issue a notice of interim trail use (NITU), impose a public use condition, and make a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g).

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 5.8-mile line of railroad on the Ankeny Industrial Lead between milepost 4.7 near Des Moines and milepost 10.5 at the end of the line at Ankeny, in Polk County, Iowa. Notice of the exemption was served and published in the Federal Register on August 24, 2012 (77 Fed. Reg. 51,614) (August 2012 notice). The exemption is scheduled to become effective on September 25, 2012.

In a letter filed on September 18, 2012 (September 18 letter), responding to a request for issuance of a NITU and imposition of a public use condition (discussed further below), UP states that it has “determined” that the portion of the line between milepost 4.7 and milepost 4.8 “will be withdrawn from the proposed [a]bandonment.” The Board construes that statement to mean that UP no longer wishes its abandonment authority to apply to that portion of the line—in other words, as a request to amend its notice of exemption to exclude that segment from the scope of its abandonment exemption. That motion will be granted, and the portion of the line between mileposts 4.7 and 4.8 will be withdrawn from the scope of the abandonment exemption. See Burlington N. & Santa Fe Ry.—Aban. Exemption—in Hamilton & Merrick Cntys., Neb., AB 6 (Sub-No. 408X) (STB served May 26, 2004). As modified, the abandonment exemption applies only to the line segment located between milepost 4.8 and milepost 10.5 (the Line).

The Board’s Office of Environmental Analysis (OEA) served an environmental assessment (EA) on August 31, 2012, recommending that no conditions be imposed on any decision granting abandonment authority. Comments on the EA were due by September 17, 2012. No comments were filed. Therefore, no environmental or historic preservation conditions will be imposed. Because no environmental or historic preservation issues have been raised by any party or identified by OEA, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the right-of-way (ROW) may be suitable for other public use following abandonment and salvage of the Line. On August 20, 2012, the Polk County Conservation Board, the City of Ankeny, and the Iowa Natural Heritage Foundation (collectively, trail sponsors) filed a request for the issuance of a NITU for the Line to permit them to negotiate with UP for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29.<sup>1</sup>

Pursuant to 49 C.F.R. § 1152.29, the trail sponsors have submitted a statement of their willingness to assume financial responsibility for the Line and have acknowledged that the use of the ROW for trail purposes is subject to possible future reconstruction and reactivation of the ROW for rail service. In the September 18 letter, UP agrees to negotiate for interim trail use/rail banking for the Line.

Because UP agrees to the trail sponsors' request for a NITU and that request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued for the Line. The parties may negotiate an agreement for the Line during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, UP may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject possible future reconstruction and reactivation of the right-of-way for rail service.

The trail sponsors also have requested imposition of a public use condition under 49 U.S.C. § 10905 for the Line.<sup>2</sup> They request that UP be prohibited from disposing of the corridor, including tracks, ties, and signal equipment, except for public use on reasonable terms, and that UP be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The trail sponsors' justification for the request is that the rail corridor is located in Central Iowa near larger communities and would make an excellent transportation and recreation trail. They state that conversion of the property would give much needed access under Interstate 80 on the west side of Des Moines, and that this trail connection would help complete the Central Iowa Trail System, a network of over 650 miles of trails. The trail sponsors state that the 180-day period is needed to complete negotiations with the railroad.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.–Use of Rights-of-Way as Trails,

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<sup>1</sup> The request applied to the segment between mileposts 4.7 and 4.8 as well, but, pursuant to this decision, that segment is no longer part of the Line authorized for abandonment.

<sup>2</sup> See note 1.

2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because the trail sponsors have satisfied these requirements, a public use condition will be imposed on the Line requiring UP to keep intact the ROW (including bridges, trestles, culverts and tunnels) and to refrain from disposing of the corridor (including the tracks, ties, and signal equipment), for a 180-day period beginning on the September 25, 2012 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Although both conditions will be imposed at this time, the public use condition will expire on March 24, 2013 (180 days from the effective date of the exemption), while the trail use negotiating period will run 180 days from the service date of this decision and notice (until March 23, 2013). If a trail use agreement is reached for the Line prior to March 24, 2013, UP must keep the remaining ROW intact for the remainder of the 180-day public use period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the trail sponsors but may engage in negotiations with other interested persons.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. UP's motion to amend its notice of exemption to remove the 0.1-mile segment between mileposts 4.7 and 4.8 from the scope of its abandonment exemption is granted.
3. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
4. Upon reconsideration, the August 2012 notice is modified to the extent necessary to:  
(1) permit the trail sponsors to negotiate with UP for interim trail use/rail banking of the Line for

a period of 180 days from the service date of this decision and notice (until March 23, 2013); and (2) permit public use negotiations for the Line as set forth below for a period of 180 days commencing from the September 25, 2012 effective date of the exemption (until March 24, 2013).

5. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, UP may discontinue service over the Line. UP shall keep intact the ROW, including bridges, trestles, culverts and tunnels, and shall refrain from disposing of the Line, including the tracks, ties, and signal equipment, for a period of 180 days to enable any state or local government agency or other interested person to negotiate the acquisition of the Line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the Line.

6. If an interim trail use/rail banking agreement is reached, it must require the trail sponsors to assume, for the term of the agreement, full responsibility for: (i) managing the ROW; (ii) any legal liability arising out of the transfer or use of the ROW (unless the trail sponsors are immune from liability, in which case they need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the ROW.

7. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the ROW for rail service and to the trail sponsors' continuing to meet their responsibilities described in ordering paragraph 5 above.

8. If an interim trail use agreement is reached, the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

9. If interim trail use is implemented, and subsequently the trail sponsors intend to terminate trail use on all or any portion of the Line covered by the interim trail use agreement, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

10. If an agreement for interim trail use/rail banking is reached by March 23, 2013, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the Line.

11. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.