

44505
DO

SRVICE DATE - LATE RELEASE JUNE 30, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 268X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MILWAUKEE COUNTY, WIS.

Decided: June 29, 2015

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 3.08-mile line of railroad known as the Capitol Drive Industrial Lead, extending from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the northeast Milwaukee area, in Milwaukee County, Wis. Notice of the exemption was served and published in the Federal Register on April 9, 2009 (74 Fed. Reg. 16,256). The exemption became effective on May 9, 2009.

On April 14, 2009, the Board's Section of Environmental Analysis (SEA)¹ served an environmental assessment (EA) in this proceeding recommending that the abandonment be subject to the conditions that UP shall: (1) consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers that may be affected by the proposed abandonment; and (2)(a) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, structures, objects, or districts within the right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) (generally 50 years old or older) until completion of the section 106 process, (b) report to OEA regarding any consultations with the Wisconsin State Historic Preservation Society (SHPO) and any other section 106 consulting parties, and (c) not file its consummation notice or initiate salvage activities related to the abandonment (including the removal of tracks and ties) until completion of the section 106 process and the Board has removed the condition. By decision served May 8, 2009, the recommended conditions were imposed.

By decision and notice of interim trail use (NITU) served on June 12, 2009, the Wisconsin Department of Transportation (WisDot) was authorized to negotiate with UP for the right-of-way for a period of 180 days. By a series of decisions, the last of which was served on May 6, 2015, the negotiating period was extended to December 5, 2015. On December 9, 2014, the Board extended the negotiating period under the NITU only for the 2.85-mile portion of the right-of-way between mileposts 91.98 and 89.13, and vacated the NITU for the segment between

¹ SEA is the predecessor to the Board's Office of Environmental Analysis (OEA).

mileposts 92.21 and 91.98, because UP stated that it required that portion of the right-of-way for its railroad operations.

In an OEA Memorandum dated May 12, 2015, OEA states that the SHPO indicated in an April 28, 2015 letter to UP that approval of the abandonment would have no adverse effect on historic properties pursuant to section 106 of the National Historic Preservation Act. The SHPO stated that the line included several bridges that are contributing resources to two National Register-eligible parks (Estabrook Park and Lincoln Park).² OEA states that the SHPO has determined that the Board's approval of the proposed abandonment would not adversely affect historic properties. OEA therefore recommends that the section 106 condition be removed.

On May 20, 2015, UP notified the Board that on May 18, 2015, the parties reached a trail use/rail banking agreement for the 2.85 mile line segment of rail line between mileposts 91.98 and 89.13.

Consistent with OEA's recommendation, the section 106 historic preservation condition imposed in the May 8, 2009 decision will be removed. The previously imposed NGS consultation condition remains in effect.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the May 8, 2009 decision is removed.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

² The SHPO indicated that the right-of-way contains two known burial sites, that any ground breaking work must be authorized by the SHPO and be consistent with state and federal statutes, and that any alteration to the bridges must be coordinated with the SHPO.