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SERVICE DATE – OCTOBER 30, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 260X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN DOUGLAS AND SARPY COUNTIES, NE

Decided: October 28, 2009

By decision and notice of interim trail use or abandonment (NITU) served on July 25, 2008 (July 2008 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Union Pacific Railroad Company (UP) of a 3.45-mile line of its Millard Industrial Lead extending between milepost 22.85, in Omaha, and milepost 19.4, in La Vista, in Douglas and Sarpy Counties, NE, subject to trail use, public use, environmental, and standard employee protective conditions. In this decision, the Board is granting the request by the Nebraska Trails Foundation, Inc. (NTFI), on its own behalf and that of the Papio-Missouri River Natural Resources District (District), to extend the interim trail use/rail banking negotiation period.

The July 2008 decision authorized NTFI, on its own behalf and that of the District, to negotiate with UP for interim trail use/rail banking until February 20, 2009, for a portion of the line extending between milepost 19.4 in La Vista and milepost 22.1 in Omaha, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ By decisions served on February 20, 2009, and May 21, 2009, the NITU negotiating period was extended until October 17, 2009.

On October 19, 2009, NTFI, on its own behalf and that of the District, submitted a request for an additional 180-day extension of the negotiating period until April 15, 2010. By letter dated October 19, 2009, UP advised that it supports the request and is willing to continue to negotiate for interim trail use/rail banking with NTFI for the portion of the line extending between milepost 19.4 in La Vista and milepost 22.1 in Omaha.

¹ In addition to interim trail use, the July 2008 decision also imposed a public use condition that expired on February 20, 2009, and that may not be extended, and three environmental conditions that remain in effect.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.² Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for that portion of the line extending between milepost 19.4 in La Vista and milepost 22.1 in Omaha, from October 17, 2009, to April 15, 2010.

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

It is ordered:

1. The request to extend the NITU negotiation period is granted.
2. The negotiating period under the NITU is extended for that portion of the line extending between milepost 19.4 in La Vista and milepost 22.1 in Omaha, from October 17, 2009, to April 15, 2010.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).