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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 255)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN CARVER AND
SCOTT COUNTIES, MINN.

Decided: September 2, 2010

By decision and certificate of interim trail use or abandonment (CITU) served on April 1, 2008 (April 2008 decision), the Board granted the application filed by Union Pacific Railroad Company (UP) for abandonment of its Chaska Industrial Lead, extending from milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, a distance of 5.6 miles, in Carver and Scott Counties, Minn. The abandonment was subject to public use, environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Office of Carver County Regional Railroad Authority (CCRRA) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The deadline to negotiate a CITU was extended to July 25, 2009, by decisions served on September 12, 2008, March 30, 2009, and June 9, 2009. In this decision, the Board is removing the historic preservation condition and is again extending the CITU negotiating period.

The Board's Section of Environmental Analysis (SEA), in an Environmental Assessment (EA) served on January 15, 2008, considered the potential environmental impacts of the proposed abandonment and found that, as conditioned, it would not significantly affect the quality of the human environment. In the EA, SEA recommended that UP: (1) be required to retain its interest in and take no further steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f; (2) report back to SEA regarding any consultations with the Minnesota Historical Society, State Historic Preservation Officer (SHPO) and the public; and (3) be prohibited from filing its consummation notice or initiating any salvage activities until the section 106 process has been completed.¹

Pursuant to 36 C.F.R. § 800.6, SEA has consulted with the SHPO, UP, and the City of Carver (City) regarding the resolution of adverse effects and ways to avoid, minimize, or

¹ The environmental conditions imposed in the April 2008 decision remain in effect. The public use condition expired on October 12, 2008.

mitigate effects on the historic resources as a result of the abandonment and disposition of UP's assets. Pursuant to these consultations, SEA, the SHPO, UP, and the City developed and signed a Memorandum of Agreement (MOA) that addressed the needs of all parties. SEA states that the documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of UP's historic report, all relevant correspondence, and the EA, which have been made available to the public through posting on the Board's website at <http://www.stb.dot.gov>. Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition imposed in the April 2008 decision be removed. Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

According to UP, the removal of the historic preservation condition will permit UP to remove the Minnesota River Bridge and the Main Street Bridge (collectively, the bridges), both of which are near Milepost 36.17, and both of which may, if left in place, expose the area to flooding hazards in the spring thaw season. Additionally, the Scott County Regional Rail Authority (SCRRA) states that the bridges are structurally deficient and in danger of collapse.

By a pleading filed on August 17, 2010, SCRRA² and CCRRA jointly request an extension of the CITU negotiating period for 60 days, until October 15, 2010, for the portion of the right-of-way extending from milepost 38.0 to milepost 33.0.³ SCRRA also requests that the CITU be modified to exclude the bridges, due to the bridges' poor condition. SCRRA states that it was unable to reach an agreement with UP during the previous negotiating period, but that it has renewed funding for the acquisition. SCRRA states that the trail use agreement with UP will address replacement of the bridges should rail service be reactivated at some point in the future. In a pleading filed on August 19, 2010, UP concurs in the requests to extend the negotiating period as to the portion of the right-of-way extending from milepost 38.0 to milepost 33.0, excluding the bridges.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue trail use negotiations, except for the portion of the right-of-way extending from milepost 38.6 to milepost 38.0 and the bridges, the Board retains jurisdiction and the CITU negotiating period may be

² CCRRA filed its original CITU and public use request, including a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way as required by 49 C.F.R. § 1152.29, on behalf of The Minnesota River Valley Rail Preservation Project (MRVRPP), a collaboration between CCRRA and 4 other bodies politic existing under Minnesota law and interested in transportation, recreation, and public utilities. Because SCRRA is one of the bodies politic that comprises MRVRPP, SCRRA is considered to have already made the representations required by 49 C.F.R. § 1152.29, and a new CITU does not need to be issued.

³ The original CITU included the entire right-of-way, extending from milepost 38.6 to milepost 33.0. In its current extension request, SCRRA does not request that the NITU extend from milepost 38.6 to milepost 38.0.

extended.⁴ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, a CITU negotiating period will be imposed for 60 days from September 2, 2010 (until November 1, 2010), for that portion of the line extending from milepost 38.0 to milepost 33.0 (excluding the bridges).

This decision 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 April 2008 decision is removed.
3. The request to extend the CITU negotiating period for the portion of the line between milepost 38.0 and milepost 33.0, excluding the bridges located at milepost 36.17, is granted.
4. The CITU negotiating period for the portion of the line described above is imposed until November 1, 2010. UP may salvage the bridges and may fully abandon the portion of the right-of-way between milepost 38.6 and milepost 38.0, subject to meeting the outstanding conditions imposed in the April 2008 decision.
5. This decision is effective on its service date.

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

⁴ See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).