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SERVICE DATE – APRIL 5, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 248X)

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

Decided: April 1, 2011

In this decision, an extension is granted for negotiating a trail use/rail banking agreement. 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 portion of its line of railroad known as the Bondurant Industrial Lead, extending from milepost 225.56 near Berwick to milepost 232.80 near Bondurant, a distance of 7.24 miles, in Polk County, Iowa. Notice of the exemption was served and published in the Federal Register on February 18, 2010 (75 Fed. Reg. 7,302-03).¹

By decision and notice of interim trail use or abandonment (NITU) served on March 19, 2010 (March 2010 decision), the proceeding was reopened and a 180-day period was authorized for the Iowa Natural Heritage Foundation, in conjunction with the Polk County Conservation Board, the City of Bondurant, and the Iowa Trails Council (collectively, INHF), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). The negotiating period under the NITU was scheduled to expire on September 15, 2010.

On September 15, 2010, INHF filed a motion to extend the NITU negotiating period for the right-of-way until March 15, 2011. In a response filed on October 5, 2010, UP stated that it was willing to continue negotiating with INHF for an additional 180 days, but only for the portion of the line between milepost 226.38, near Berwick, and milepost 232.52, near Bondurant because, in the same filing, UP advised the Board, pursuant to 49 C.F.R. § 1152.29(e)(2), that it was consummating abandonment of the portions of the line between mileposts 225.56 and 226.38 and between mileposts 232.52 and 232.80.

By decision and NITU served on January 12, 2011, the proceeding was reopened to modify the March 2010 decision and vacate the NITU for the segments of the right-of-way between mileposts 225.56 and 226.38 and between mileposts 232.52 and 232.80. That decision also extended for an additional 180 days (until March 14, 2011) the NITU negotiating period for the remaining segment between mileposts 226.38 and 232.52.

¹ The exemption became effective on March 20, 2010.

On March 14, 2011, INHF filed a motion to extend further the NITU negotiating period for the right-of-way until September 15, 2011.² INHF states that additional time is needed to complete interim trail use negotiations. In a response filed on March 15, 2011, UP states that it is willing to continue negotiating with INHF for an additional 180 days, but, again, only for the portion of the line between milepost 226.38, near Berwick, and milepost 232.52, near Bondurant. UP reiterates that it previously consummated abandonment of the portions of the line between mileposts 225.56 and 226.38 and between mileposts 232.52 and 232.80, so those segments are not available for interim trail use.

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.³ 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for the portion of the line between milepost 226.38, near Berwick, and milepost 232.52, near Bondurant, for an additional 180 days to September 10, 2011.

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

It is ordered:

1. INHF's request to extend the NITU negotiating period is granted in part, as discussed above.
2. The negotiating period under the NITU is extended for the portion of the right-of-way between milepost 226.38 and milepost 232.52 for 180 days, until September 10, 2011.
3. This decision is effective on its service date.

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

² An extension to that date would be 185 days in length.

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).