

43281
DO

SERVICE DATE – AUGUST 19, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 313X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MIAMI COUNTY, KAN.

Decided: August 19, 2013

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 0.50 miles of the Osawatomie Industrial Lead, from milepost 335.0 to milepost 335.5 near Osawatomie, in Miami County, Kan. Notice of the exemption was served and published in the Federal Register on July 23, 2013 (78 Fed. Reg. 44,190). The exemption is scheduled to become effective on August 22, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on July 26, 2013. In the EA, OEA stated that the National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment on any geodetic survey markers that may be present in the project area. Accordingly, OEA recommends that a condition be imposed requiring UP to consult with NGS prior to beginning salvage activities. If NGS identifies geodetic station markers that may be affected by the proposed abandonment, UP shall notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to plan for the possible relocation of the geodetic station markers by NGS.

In addition, OEA stated that the Kansas Historical Society (State Historic Preservation Office, or SHPO) submitted comments stating that the abandonment as proposed would have no effect on properties listed in the National Register of Historic Places (National Register) or otherwise identified in the SHPO's files. According to OEA, the SHPO stated that it has no objection to the proposed abandonment, but stated that any changes to the proposed project area should be reviewed by the SHPO and, should any archeological materials be discovered during salvage activities, UP should inform the SHPO immediately. Thus, OEA is recommending a condition requiring that, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during the railroad's salvage activities, UP will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, interested federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Comments to the EA were due August 12, 2013, but none were received. Accordingly, the conditions recommended by OEA in the EA will be imposed. Based on OEA's

recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On August 1, 2013, the City of Osawatomie (the City) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with UP for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the City has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on August 5, 2013, UP has indicated its willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way 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 to possible future reconstruction and reactivation of the right-of-way for rail service.

As conditioned, 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 notice served and published in the Federal Register on July 23, 2013, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with UP for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until February 15, 2014. The abandonment is also subject to the conditions that UP: (1) consult with NGS prior to beginning salvage activities and, if NGS identifies geodetic station markers that may be affected by the proposed abandonment, notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers to plan for the possible relocation of the geodetic station markers by NGS; (2) will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during UP's salvage activities. OEA shall then consult with the SHPO, interested federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it 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 right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. 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).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by February 15, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the line.

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

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.