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SERVICE DATE – JULY 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 286X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN YAKIMA COUNTY, WASH.

Decided: July 16, 2010

This proceeding is reopened to impose environmental and historic conditions on the abandonment of a rail line. Union Pacific Railroad Company (UP) filed a notice of exemption under 49 U.S.C. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.8-mile line of railroad between milepost 62.75 and milepost 63.55 on the Yakima Industrial Lead, near Midvale, in Yakima County, Wash. Notice of the exemption was served and published in the Federal Register on June 22, 2010 (75 Fed. Reg. 35,514-15). The exemption is scheduled to become effective on July 22, 2010.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 25, 2010. In the EA, SEA states that the U.S. Army Corps of Engineers (Corps) submitted comments stating that the proposed abandonment may require a permit under section 404 of the Clean Water Act and requested additional information to determine if the proposed abandonment would impact waters under the Corps' jurisdiction. The Corps also indicated that irrigation ditches in the area of the proposed abandonment are likely jurisdictional. Accordingly, SEA recommends in the EA a condition requiring UP to consult with the Corps regarding potential section 404 requirements and comply with the Corps' reasonable requirements.

Additionally, SEA states in the EA that UP has submitted its historic report to Washington Department of Archaeology & Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). In the EA, SEA indicates that the SHPO provided comments stating that the UP Midvale Bridge is a significant resource spanning an irrigation system and the Bureau of Reclamation considers the bridge eligible for listing on the National Register of Historic Places (National Register). The SHPO recommended that a professional cultural resources survey be completed for the project area. Accordingly, SEA recommends that UP retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or are listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), has been completed.

SEA notes in the EA that, pursuant to 36 C.F.R. § 800.2, it has conducted a search of the Native American Consultation Database (database) at <http://home.nps.gov/nacd/> to identify

Federally recognized tribes that may have ancestral connections to the project area. According to SEA, the database indicated that the Confederated Tribes and Bands of the Yakima Nation, Washington, and the Confederated Tribes of the Colville Reservation, Washington, may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way for the proposed abandonment. SEA states in the EA that it is sending a copy of the EA to these tribes for their review and comment.

Comments to the EA were due by July 12, 2010, and no comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

In the EA, SEA states that the right-of-way might be suitable for other public use following abandonment of the line. Requests for a public use condition were due by July 12, 2010, and none were received. Formal expressions of intent to file an offer of public assistance under 49 C.F.R. § 1152.27(c)(2) and requests for trail use/rail banking were due by July 2, 2010, and none were received.

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 June 22, 2010, exempting the abandonment of the line described above is subject to the conditions that: (1) prior to commencement of any salvage activities, UP shall consult with the Corps regarding potential section 404 requirements and shall comply with the Corps' reasonable requirements; and (2) UP shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until the Section 106 process of the NHPA, 16 U.S.C. § 470f, has been completed. UP shall report back to SEA regarding any consultations with the SHPO and the public. UP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
3. This decision is effective on its service date.

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