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SERVICE DATE – FEBRUARY 1, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT EXEMPTION – IN ELLIS  
COUNTY, TX

Decided: January 31, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876). The exemption was scheduled to become effective on January 6, 2006.<sup>1</sup>

On January 11, 2006, the City of Waxahachie, Texas (the City), late-filed a request for the issuance of a notice of interim trail use (NITU) for the subject line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29.<sup>2</sup> The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of

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<sup>1</sup> By decision served on January 5, 2006, the proceeding was reopened and the exemption was made subject to the conditions that UP: (1) consult with the U.S. Army Corps of Engineers prior to commencement of any salvage activities to determine whether a permit under section 404 of the Clean Water Act, 33 U.S.C. 1344, is required; (2) notify the National Geodetic Survey (NGS) not less than 90 days in advance of any planned activities so that NGS may plan for relocation of the station markers identified on the line; and (3) consult with the U.S. Fish and Wildlife Service regarding possible impacts to Federally listed threatened and endangered species that may occur in the vicinity of the line proposed for abandonment. The environmental conditions remain in effect.

<sup>2</sup> The December 7, 2005 notice of exemption provided that requests for trail use/rail banking had to be filed by December 16, 2005. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. In a response filed on January 17, 2006, UP advised the Board that it is willing to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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. The late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the notice of exemption served and published in the Federal Register on December 7, 2005, 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 of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until July 31, 2006), and subject to the conditions imposed in the January 5, 2006 decision.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, 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 July 31, 2006 (the 180th day after service of this decision and notice), interim trail use may be implemented. If no

agreement is reached by that time, UP may fully abandon the line, provided that the environmental conditions imposed in the January 5, 2006 decision are met.

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary