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SERVICE DATE – NOVEMBER 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 247X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN  
MALHEUR COUNTY, OR

Decided: November 14, 2007

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 9.4-mile line of railroad known as the Homedale Industrial Lead, extending from milepost 2.0 near Nyssa to milepost 11.4 near Adrian, in Malheur County, OR. Notice of the exemption was served and published in the Federal Register on October 17, 2007 (72 FR 13156). The exemption is scheduled to become effective on November 16, 2007.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 22, 2007. In the EA, SEA noted that the National Geodetic Survey (NGS) had identified three geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA has recommended that UP be required to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy the three geodetic station markers.

No comments to the EA were received by the November 6, 2007 due date. Accordingly, the condition recommended by SEA will be imposed. Based on SEA’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 a letter filed on October 29, 2007, the Malheur County Court (the Court) has requested the issuance of a public use condition under 49 U.S.C. 10905,<sup>1</sup> for that portion of the right-of-way (ROW) between milepost 6.35 and milepost 8.16, in order to negotiate with UP for the acquisition of the ROW for use as an existing public road, a portion of which is currently under lease from UP. The Court requests that UP be prohibited from disposing of that portion of the corridor, other than tracks, ties and signal equipment, except for public use, and that UP be barred from the removal of any shared structures, such as culverts, without consulting with the County Engineer, for a 180-day period from the effective date of the abandonment. By letter

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<sup>1</sup> SEA indicated in the EA that the right-of-way (ROW) may be suitable for other public use following abandonment.

filed on November 7, 2007, UP has indicated its willingness to negotiate with the Court for a public use condition.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the County has satisfied these requirements, a 180-day public use condition will be imposed for the portion of the ROW between milepost 6.35 and milepost 8.16, commencing from the November 16, 2007 effective date of the exemption. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes. Therefore, UP is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

It is ordered:

1. This proceeding is reopened.
2. The request for imposition of a public use condition is granted, as discussed in this decision.
3. Upon reconsideration, the notice served and published in the Federal Register on October 17, 2007, exempting the abandonment of the rail line described above is subject to the conditions that UP shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy the three geodetic station markers; and (2) for the portion of the line between milepost 6.35 and milepost 8.16, keep intact the ROW, including shared structures such as culverts (but not track, ties and signal equipment), for a period of 180 days commencing from the November 16, 2007 effective date of the exemption (until May 14, 2008), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary