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SERVICE DATE - JANUARY 9, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 104X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN OCONTO COUNTY, WI

Decided: January 6, 1997

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuance of Service and Trackage Rights to abandon and discontinue service over an approximately 8.3-mile line of railroad known as the Oconto Falls Industrial Lead from milepost 54.4, near Oconto, to the end of the line at milepost 46.1, near Stiles Junction, in Oconto County, WI. Notice of the exemption was served and published in the Federal Register on December 11, 1996 (61 FR 65264). The exemption is scheduled to become effective on January 10, 1997.

On December 20, 1996, Wisconsin Department of Transportation (WisDOT) petitioned for issuance of a notice of interim trail use/rail banking (NITU) for the Wisconsin Department of Natural Resources (WisDNR) to negotiate with UP to acquire and use the entire right-of-way for interim highway, bicycle, pedestrian and other trail use purposes and rail banking under the National Trails System Act (Trails Act) 16 U.S.C. 1247(d). WisDNR submitted a statement indicating its willingness to assume full responsibility for management of, and liability for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. On January 6, 1997, UP indicated its willingness to negotiate with WisDNR for interim trail use.

Because the requirements of section 1152.29 have been satisfied and UP is willing to enter into negotiations with WisDNR, a NITU will be issued under 49 CFR 1152.29(d) to cover the entire line. The parties may negotiate an agreement during the 180-day period following service of this decision.

This decision 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 notice of exemption served and published in the Federal Register on December 11, 1996, is modified to the extent necessary to implement interim trail use/rail banking, as set forth below.
3. Subject to any conditions previously imposed, UP may discontinue service and salvage track and track materials, consistent with interim trail use and rail banking, 30 days after service of this decision and notice (on or after February 8, 1997).

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 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 taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to the future reactivation 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 specific date.

7. If an agreement for interim trail use/rail banking is reached by July 8, 1997, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line. See 49 CFR 1152.29(d)(1).

8. The decision is effective on its service date.

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

Vernon A. Williams
Secretary