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SERVICE DATE - APRIL 11, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 108X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN CONTRA COSTA COUNTY, CA

Decided: April 10, 1997

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Trackage Rights to abandon and discontinue service over a 1.845-mile portion of its line of railroad known as the Port Chicago Industrial Lead from the end of the line at milepost 37.06 near Clyde, to milepost 38.905 near Port Chicago, in Contra Costa County, CA. Notice of the exemption was served and published in the Federal Register on March 11, 1997 (62 FR 11251). The exemption is scheduled to become effective on April 10, 1997.

An environmental assessment (EA) prepared by the Board's Section of Environmental Analysis (SEA) was made available to the public on March 21, 1997. In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment. On April 8, 1997, the County of Contra Costa (County) late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under 16 U.S.C. 1247(d), and a public use condition, so that it could negotiate with UP for use of the line as a trail.¹ The County requests that UP be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels for a 180-day period.

By facsimile filed April 10, 1997, UP states that it is not willing to negotiate with the County for interim trail use. Therefore, because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the National Trails System Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. 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). A 180-day public use condition will, therefore, be imposed to control disposal of rail properties being abandoned. UP may remove the

¹ The March 11 decision provided that requests for trail use/rail banking had to be filed by March 21, 1997. The Board will accept late-filed trail use requests so long as the abandonment has not been consummated, but may issue a NITU only if the abandoning railroad is willing to negotiate an agreement.

tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period.

A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found appropriate for public purposes.

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 request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted. The exemption of the abandonment of the line described is subject to the condition that UP leave intact all of the right-of-way underlying the tracks, including bridges, culverts and tunnels (but not track or other rail assets), for a period of 180 days from the April 10, 1997 effective date of the exemption (i.e., until October 7, 1997), to enable any State or local government agency or other interested person to negotiate the line's acquisition for public use.
7. The decision is effective on the service date.

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

Vernon A. Williams
Secretary