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SERVICE DATE – LATE RELEASE MARCH 24, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 253X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN COLORADO AND WHARTON COUNTIES, TX

Decided: March 24, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.3-mile line of railroad known as the Chesterville Industrial Lead, extending from milepost 52.9 near Chesterville to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, TX.¹ Notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8928-29). The exemption was scheduled to become effective on March 18, 2008.

On February 25, 2008, and as amended on March 6, 2008, Metro filed a request pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way. Metro has 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 any and all taxes that may be levied or assessed against, 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 reconstruction and reactivation for rail service. In a letter filed on March 14, 2008, UP consents to the issuance of a NITU.

Because Metro'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 for the aforementioned segment. 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. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ UP sought to abandon its retained railroad operating easement to provide common carrier service over the line. UP previously sold the track and right-of-way to Metropolitan Transit Authority of Harris County, TX (Metro). Metro holds no common carrier obligation.

It is ordered:

1. This proceeding is reopened.
2. The request for a NITU, under 16 U.S.C. 1247(d), is granted.
3. 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.
4. 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 for the right-of-way.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by September 14, 2008, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.
7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary