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SERVICE DATE - MAY 6, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 134X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT AND
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION--IN
LOS ANGELES COUNTY, CA

Decided: May 3, 1999

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 1.44-mile line of railroad on the Lincoln Park Drill (the Line) from milepost 486.30 near State Street to the end of the line at milepost 487.74 near Lincoln Park, and for discontinuance of overhead trackage rights over a 0.8-mile line of the Southern California Regional Rail Authority's (SCRRA Track) San Gabriel Subdivision from milepost 485.30 to milepost 486.10 near State Street, in Los Angeles County, CA. Notice of the exemption was served and published in the Federal Register on April 7, 1999 (64 FR 17056-57). The exemption is scheduled to become effective on May 7, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 12, 1999. In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy this marker to plan for its relocation. Therefore, SEA recommends that a condition be imposed requiring UP to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic marker. The condition will be imposed.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed April 30, 1999, the Los Angeles & San Gabriel Rivers Watershed Council (Commenter) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it can negotiate with UP for acquisition of the right-of-way for use as a recreational trail.¹

¹ The April 7 notice provided that requests for trail use/rail banking had to be filed by April 19, 1999, and that requests for public use conditions had to be filed by April 27, 1999. Commenter's request was tendered to the Board for filing on April 19, 1999. Commenter requested in its filing that the filing fee be waived but did not include the required \$150 filing fee. The Board did not waive the filing fee. On April 30, 1999, the Board received Commenter's required fee, and a filing date of April 30, 1999 was entered. In Abandonment and Discontinuance of Rail Lines and

Commenter 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 that UP be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Commenter states that it needs the full 180-day period to review title information, complete a trail plan, and commence negotiations with UP. Commenter submitted a statement indicating its 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 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. By reply dated April 20, 1999, UP indicated its willingness to negotiate with Commenter for interim trail use.

Commenter's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate. Therefore, 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. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

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). Commenter has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board stated that it would accept filings after the due date when good cause is shown. Under the circumstances, and because Commenter's late-filed request does not appear to 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).

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. 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 right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with Commenter, but may engage in negotiations with other interested persons.

As conditioned, 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. Upon reconsideration, the notice of exemption served and published in the Federal Register on April 7, 1999, 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, subject to the conditions that UP shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic marker; and (b) keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the May 7, 1999 effective date (until November 3, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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 obligation 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.

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6. If any agreement for interim trail use/rail banking is reached by November 3, 1999, 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.

Vernon A. Williams
Secretary