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SERVICE DATE – DECEMBER 27, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 433 (Sub-No. 2X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY—ABANDONMENT  
AND DISCONTINUANCE EXEMPTION—IN WASHINGTON AND ADAMS COUNTIES,  
IDAHO

Decided: December 26, 2012

On February 28, 1997, the Board served a notice of interim trail use or abandonment (NITU) authorizing Friends of the Weiser River Trail, Inc. (Friends), to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for approximately 83.1 miles of rail line between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, Idaho (the Line).<sup>1</sup> On June 19, 1997, UP filed a letter notifying the Board that it had reached an agreement with Friends for interim trail use/rail banking. Shortly thereafter, UP notified the Board that the Line (including ballast, bridges and culverts) between milepost 0.5 near Weiser and milepost 84.1 at Rubicon and an adjacent 0.5 mile line<sup>2</sup> had been conveyed to Friends in accordance with the Trails Act, and Friends notified the Board that it had acquired both the Line and the adjacent 0.5-mile line.

On November 29, 2012, Friends filed a letter requesting that the Board vacate the NITU, in part, to the extent it may apply to property lying outside of a 100-foot width of right-of-way in Starkey Hot Springs that was surveyed in May 2009. According to Friends, a dispute exists as to

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<sup>1</sup> Originally, the Interstate Commerce Commission, the Board's predecessor, in a decision served on November 1, 1995, had exempted Idaho Northern & Pacific Railroad Company from the prior approval requirements of 49 U.S.C. §§ 10903-04 to abandon the Line and discontinue trackage rights over a rail line owned and operated by UP between milepost 0.0 and milepost 1.0 near Weiser.

<sup>2</sup> See Union Pac. R.R.—Discontinuance of Service Exemption—in Washington Cnty., Idaho, AB 33 (Sub-No. 100X) (STB served July 29, 1996); 61 Fed. Reg. 39512. There, the Board exempted UP's abandonment of a 0.5-mile segment of rail line adjacent to the Line, extending from milepost 0.5 to the end of the segment at milepost 1.0, near Weiser, in Washington County, Idaho. On September 18, 1996, the Board issued a NITU in response to a trail use request filed by the City of Weiser, Idaho. During the negotiating period that followed, Friends also filed a NITU request for the segment. UP indicated its willingness to negotiate with Friends for trail use of the segment, and the Board served a NITU on December 20, 1996, authorizing Friends to negotiate an interim trail use/rail banking agreement with UP.

whether any right-of-way interests extend beyond the surveyed 100-foot wide right-of-way, and that dispute includes whether a wider right-of-way was originally acquired by the originating railroad, and if so, whether such interests were abandoned or forfeited. Friends further asserts that irrespective of this dispute, to the extent any such right-of-way interests did or do exist, any property lying outside the 100-foot width of the right-of-way would not be needed for potentially reactivating rail service over the Line in the future.

Asserting that it intends to quitclaim to the adjoining landowners any right-of-way interests that it may have acquired from UP that lie outside of the surveyed 100-foot wide right-of-way, Friends requests that the Board reopen this proceeding and vacate the NITU, in part, so that to the extent any right-of-way interests exist or existed outside of the 100-foot width of right-of-way in Starkey Hot Springs that was surveyed in May 2009, those interests now may be abandoned pursuant to the Board's authority. Friends also states that it will remain the trail manager for the remaining 100-foot wide right-of-way. UP consented to Friends' request in a letter filed on December 14, 2012.

Friends' petition to modify or vacate the NITU, in part, invokes 49 C.F.R. § 1152.29. The provisions in those regulations for vacating NITUs were developed to apply to situations where the length of a railbanked line would be shortened—i.e., where the abandonment would be partly consummated—not where, as here, the right-of-way would be narrowed, but would be adequate for potential future rail service. Given the circumstances presented here, it is not necessary to vacate in part or otherwise modify the NITU.<sup>3</sup> This decision, however, clarifies that any right-of-way interests that exist or existed outside of the Line's 100-foot wide right-of-way in Starkey Hot Springs that was surveyed in May 2009 are no longer part of the NITU in this proceeding and may be abandoned.

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

It is ordered:

1. Friends' petition is granted as described above.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>3</sup> See, e.g., Missouri Pac. R.R.—Aban. Exemption—in Indian River & Bowie Cntys., Tex., AB 3 (Sub-No.137X) (STB served Oct. 6, 2011).