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SERVICE DATE - FEBRUARY 10, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 143X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE OF  
TRackage RIGHTS EXEMPTION--IN WRIGHT, FRANKLIN AND CERRO GORDO  
COUNTIES, IA

Decided: February 8, 2000

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 12.38-mile line of railroad over the Thornton Industrial Lead (formerly known as the Fort Dodge Branch) from milepost 17.14 near Thornton to milepost 29.52 near Belmond, in Wright, Franklin and Cerro Gordo Counties, IA. Notice of the exemption was served and published in the Federal Register on January 12, 2000 (65 FR 1947-48). The exemption is scheduled to become effective on February 11, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 14, 2000. In the EA, SEA states that the U.S. Department of the Interior, Fish and Wildlife Service (FWS) has indicated that two federally listed species, the prairie bush clover (*Lespedeza leptostachya*) and the western prairie fringed orchid (*Platanthera praeclara*), may be present in the area. Therefore, SEA recommends that a condition be imposed requiring UP to coordinate with the FWS, Rock Island Field Office, to determine whether surveys of vegetation types in the area of salvage operations are needed and shall conduct any such surveys during an appropriate time of the year.

SEA further states that the State Historical Society of Iowa has not completed the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Therefore, SEA recommends that a condition be imposed requiring UP to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed January 18, 2000, Iowa Trails Council and the Wright County Conservation Board, a county government agency (collectively ITC and WCC) 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 under 49 U.S.C. 10905, in order to negotiate with UP for acquisition of the right-of-way for use as a recreational trail.<sup>1</sup>

ITC and WCC request 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. ITC and WCC state that they need the full 180-day period because their extensive experience in dealing with matters of this nature has been that acquisition of such a right-of-way can consume as much as or more than 180 days. ITC and WCC submitted a statement indicating 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 facsimile received on January 13, 2000, and letter reply filed January 18, 2000, UP advised the Board that it is willing to negotiate with the parties for interim trail use.<sup>2</sup>

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

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<sup>1</sup> ITC submitted a letter from WCC requesting that ITC file its request for interim trail use.

<sup>2</sup> The official filing date of ITC's petition was January 18, 2000, but UP clearly was aware of it earlier than that, as reflected by its facsimile response on January 13, 2000.

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 ITC and WCC, 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 exemption for abandonment of the line described above is subject to the conditions that UP shall: (a) coordinate with the FWS, Rock Island Field Office, to determine whether surveys of vegetation types in the area of salvage operations are needed and shall conduct any such surveys during an appropriate time of the year; and (b) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
3. The notice of exemption served and published in the Federal Register on January 12, 2000, 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 keep intact the right-of-way underlying the track, including bridges, trestles, culverts (but not track or track material or signal equipment), for a period of 180 days from the February 11, 2000 effective date (until August 9, 2000), 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.
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 legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. 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.

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 specified date.

7. If an agreement for interim trail use/rail banking is reached by August 9, 2000, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary