

34155  
DO

SERVICE DATE - NOVEMBER 6, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 210X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN MARICOPA COUNTY, AZ

Decided: November 4, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.1-mile line of railroad, known as the Creamery Spur, extending from milepost 914.3 to milepost 916.4 near University Drive between Priest Drive and Hayden Road in Tempe, Maricopa County, AZ. Notice of the exemption was served and published in the Federal Register on September 26, 2003 (68 FR 55740). The exemption became effective on October 28, 2003.<sup>1</sup>

On October 6, 2003, as amended on October 29, 2003, the City of Tempe (the City) filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with UP for acquisition of the ROW for use as a trail. The City 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 payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on October 30, 2003, UP indicated its willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for the trail use, 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, provided the previously imposed environmental and historic preservation conditions are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

---

<sup>1</sup> By decision served on October 28, 2003, the exemption was made subject to environmental and historic preservation conditions.

As conditioned, this action 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 served and published in the Federal Register on September 26, 2003, 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 for a period of 180 days from the service date of this decision and notice.
  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 ROW.
  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 ROW.
  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 the 180th day after service of this decision and notice (May 4, 2004), interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the previously imposed environmental and historical conditions have been met.
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary