

43288
DO

SERVICE DATE – NOVEMBER 8, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 257X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF TRACKAGE RIGHTS EXEMPTIONS—IN BENTON COUNTY, OR.

Decided: November 8, 2013

By petition filed on May 23, 2011, Willamette & Pacific Railroad, Inc. (WPRR), and Union Pacific Railroad Company (UP) jointly filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 for WPRR to discontinue service over, and for UP to abandon, 17.86 miles of rail line in Benton County, Or. Notice of the exemptions was served and published in the Federal Register on June 10, 2011 (76 Fed. Reg. 34,141). The rail line is described as follows: (1) from milepost 682.25 near Greenberry, Or., to milepost 671.58 near Monroe, Or., on the Bailey Branch; and (2) from milepost 673.21 near Alpine Junction, Or., to milepost 680.06 near Dawson, Or., on the Hull Oakes Lead (together, the Line).

By decision and notice of interim trail use or abandonment (NITU) served on September 9, 2011, a 180-day period was prescribed for Benton County, Or. (Benton County) to negotiate an interim trail use/rail banking agreement with UP for the Line, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). The NITU negotiating period was extended by decision (served on March 23, 2012) until September 3, 2012. The exemption also was subject to environmental and standard employee protective conditions.

Removal of the Historic Preservation Condition

Among the imposed conditions was a condition that required UP to: (1) retain its interest in and take no steps to alter the historic integrity of all historic properties, including the rail line itself, within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f; (2) report to the Office of Environmental Analysis (OEA) regarding any consultations with the Oregon Parks and Recreation Department, State Historic Preservation Office (SHPO) and the public, and (3) not file its consummation notice or initiate any salvage activities (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

According to OEA, the SHPO states that UP has agreed to transfer the right-of-way and all structures, including bridges and trestles, intact to Benton County. It is understood that Benton County would then convey the track materials located within the historic district

boundaries to Hull-Oakes Lumber Mill. OEA further states that these actions would satisfy the concerns of the SHPO and would result in a finding of no adverse effect to historic resources.

For the foregoing reasons, OEA recommends that the Section 106 condition imposed in the September 9, 2011 decision be removed. Accordingly, based on OEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.¹

Extension of the NITU Negotiating Period

By letter filed on August 1, 2013, Benton County requests an extension of the NITU negotiating period for an additional 90 days.² Benton County states that it has reached agreement with UP on the terms of sale for the right-of-way, bridges, and culverts on the Line. In a letter filed July 24, 2013, UP states that it has not consummated the abandonment and that it concurs with the request for an extension to allow the parties to complete the acquisition process.

Where, as here, the carrier has not consummated the abandonment after the end of the previously imposed negotiating period, the carrier's abandonment authority has not expired due to the Section 106 condition being a bar to consummation, and the carrier is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for 90 days from the service date of this decision, until February 6, 2014.

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.

¹ The other conditions remain in effect.

² Benton County asks that the Board issue a new NITU to allow further negotiation. However, it is the Board's practice to extend the previously granted NITU in such circumstances. Thus, Benton County's letter will be treated as a request to extend the negotiating period, as this allows Benton County the opportunity to negotiate the trails use agreement that it seeks.

2. The Section 106 historic preservation condition imposed in the September 9, 2011 decision is removed.
3. Benton County's request to extend the NITU negotiating period is granted.
4. The NITU negotiating period is extended to February 6, 2014.
5. This decision is effective on its service date.

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