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SERVICE DATE – JANUARY 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 218X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT
EXEMPTION–IN KOOTENAI COUNTY, ID

Decided: January 12, 2005

Union Pacific Railroad Company (UP) filed notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 5.25-mile line of railroad known as the Coeur d’Alene Industrial Lead from milepost 2.25 near Feeley Spur to milepost 7.50 near Gibbs, in Kootenai County, ID. Notice of the exemption was served and published in the Federal Register on December 16, 2004 (69 FR 75379-80). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on January 15, 2005, but on December 22, 2004, Pan American Railway, Inc. (PARI) filed a notice of intent to file an offer of financial assistance (OFA) to purchase the entire line. PARI simultaneously requested that UP provide it with the information prescribed in 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line, UP’s most recent reports on the physical condition of the line, UP’s estimate of the net liquidation of the line, and supporting data. Also, PARI requested the Board to toll the time period for submitting its OFA until 10 days after UP provides the necessary information. By decision served January 5, 2005, UP was directed to provide PARI with the requested information to enable PARI to file an OFA, and the deadline for PARI to file its OFA was extended until 10 days after PARI’s receipt of the required information and the effective date of the exemption was extended until 20 days after PARI’s receipt of the required information.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 21, 2004. In the EA, SEA states that the State Historic Preservation Officer (SHPO) is currently reviewing the proposed abandonment. Therefore, SEA recommends that UP be required to retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

SEA also states that the Idaho Department of Environmental Quality (IDEQ) is not aware of any large releases of hazardous materials along the rail line. Historically, the line primarily carried forest products to and from lumber mills. Petroleum products were transported to heating oil distributors and an asphalt plant. The IDEQ has expressed concern that the rail corridor’s soils contain creosote from treated ties, spilled petroleum products, and herbicides used in vegetation control. IDEQ requested a

reconnaissance assessment of the entire rail bed and right-of-way, including soil testing. IDEQ maintains that the rail corridor is known to have creosote contamination on its bed, is easily assessable to the public, and potentially poses a public health risk. IDEQ also states that a short section of the rail grade is situated along the Spokane River and any salvage activities should apply best management practices designed to protect the river from nonpoint source pollution. In addition, IDEQ states that: (1) areas used to temporarily store and/or treat salvaged rail and ties should be situated well away from the river and adequately fenced to restrict public access; (2) temporary storage and/or treatment facility situated any place along the rail line would be over the Rathdrum Prairie-Spokane Valley Aquifer, a sole drinking water source for 450,000 residents of the region. Local critical materials regulations (IDAPA 41.01.01.400) designed for aquifer protection will apply to any associated chemical storage at a storage and/or treatment site; (3) groundwater protection is required by the Idaho Groundwater Rule (IDAPA 58.01.11). Adequate measures to collect, isolate and treat any accumulating liquids should be in place. Should tie washing be contemplated on such a site, liquid waste minimization measures would be required in addition to a liquids removal or treatment plan; and (4) Resource Conservation and Recovery Act regulations may apply, dependent on any wastes generated.

In response to IDEQ's request, UP undertook a literature search on field evaluations on the migration behavior of creosote from railroad ties. According to UP's report on its research, any concentrations of creosote that could be found within the rail bed of the UP line would be minimal and would not present a risk to the general public. UP also states that a prior study in its Wallace-Mullan Branch tested the solid residuals and wash water for creosote compounds. No detectable concentrations of creosote was discovered in the wash water. In short, UP argues that, even under the aggressive conditions presented by the pressure washing, migration of creosote from railroad ties did not occur. UP states that any salvage operations that may result from abandonment would be in accordance with UP's general practice of requiring its private contractors to comply with all federal, state, and local laws and regulations pertaining to the environment, including, but not limited to, noise, air quality, water quality, and items of archaeological significance. Therefore, based on this information, SEA recommends that a condition be imposed requiring UP to consult with the IDEQ prior to any salvage activities to ensure that the proposed abandonment and salvage of the Coeur d'Alene Industrial Lead line would not pose any adverse impacts to human health and safety.

SEA indicated that the right-of-way may be suitable for other public use following abandonment. By petition filed on December 29, 2004, the North Idaho Centennial Trail Foundation (NICTF) 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. NICTF 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 the

payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. On January 11, 2005, UP indicated its willingness to negotiate with NICTF for interim trail use and its agreement with imposition of a public use condition.

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 would be effective; and (iv) justification for the imposition of the period requested. See 49 CFR 1152.28(a)(2). NICTF has satisfied the requirements for both a public use condition and a NITU, and therefore, imposition of both would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If an agreement is reached on sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision and notice of interim trail use or abandonment will be issued.

The conditions recommended by SEA will be imposed. 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, of the abandonment of the line described above is subject to the conditions that UP: (a) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until completion of the section 106 process of the NHPA; and (b) consult with the IDEQ prior to any salvage activities to ensure that the proposed abandonment and salvage of the Coeur d'Alene Industrial Lead line would not pose any adverse impacts to human health and safety.
3. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.

4. If the OFA process terminates, a decision effective on its service date will be issued to impose the notice of interim trail use and public use conditions.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary