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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 279X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN POLK
COUNTY, IA

Decided: March 18, 2010

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon .20 miles of a line of railroad on the Ankeny Industrial Lead from milepost 10.50 in Ankeny to milepost 10.70 in Ankeny, in Polk County, IA. Notice of the exemption was served and published in the Federal Register on February 18, 2010 (75 FR 7303). The exemption is scheduled to become effective on March 20, 2010.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 23, 2010. In the EA, SEA states that the U.S. Army Corps of Engineers (Corps) indicated that a section 404 permit under the Clean Water Act may be required if salvage activities result in the placement of dredged and/or fill material into wetlands or waters of the United States. The Corps also indicated that the Iowa Department of Natural Resources (IA DNR) should be contacted to determine if salvage activities would impact the floodplain and thus require a permit. SEA notes in the EA that it is not certain whether salvage of the rail line would impact any of the water resources of concern. Accordingly, SEA recommends that, prior to commencement of any salvage activities, UP be required to consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and to comply with the reasonable requirements of the Corps. SEA indicates that it has added IA DNR, Floodplain Protection Program, to the service list for this proceeding to receive a copy of the EA and provide comments, as necessary.

In the EA, SEA also states that UP served the historic report on the Iowa State Historic Preservation Office (SHPO), pursuant to 49 CFR 1105.8(c). However, SEA has not heard from the SHPO and therefore has not been able to consider the SHPO's opinion before determining if the line may be potentially eligible for listing on the National Register of Historic Places (National Register). Accordingly, SEA recommends that UP be required to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed. SEA also recommended that UP be required to report back to SEA regarding any consultations with the SHPO and the public, and that UP not be allowed to consummate the abandonment or initiate

any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Pursuant to 36 CFR 800.2, SEA notes that it conducted a search of the Native American Consultation Database (database) at <http://home.nps.gov/nacd/> to identify Federally recognized tribes, which may have ancestral connections to the project area. According to SEA, the database indicated that there are 10 tribes that may have knowledge regarding properties of traditional religious and cultural significance within the Area of Potential Effect. The tribes are: the Flandreau Santee Sioux; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Lower Sioux Indian Community of Minnesota; the Prairie Island Indian Community; the Sac and Fox Nation of Missouri; the Sac and Fox Nation of Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Santee Sioux Nation; and the Upper Sioux Community of Minnesota. SEA states that it has added these tribes to the service list for this proceeding to receive a copy of the EA for review and comment.

Comments to the EA were due by March 10, 2010. One comment was received after the issuance of the EA. IA DNR's Conservation and Recreation Division (CRD) commented that it searched for records of rare species and significant natural communities in the project area and found no site-specific records that would be impacted by this project. However, CRD indicated that these records and data are not based on thorough field surveys and that, if listed species or rare communities are found during the planning or construction phases, additional studies and/or mitigation may be required. Accordingly, based on this information, SEA recommends that UP be required, prior to initiating salvage activities, to consult with CRD to determine if the proposed abandonment would impact any rare species and/or significant natural communities and to comply with CRD's reasonable requirements. CRD also commented that any construction activity that bares the soil of an area greater than or equal to 1 acre, including clearing, grading, or excavation, may require a storm water discharge permit from IA DNR. CRD further commented that IA DNR administers fugitive dust regulations. According to SEA, these regulations may apply to the salvage process. However, SEA states that it is not certain if UP intends to disturb any of the underlying soil during salvage on the approximately 2.42 acres encompassing the proposed abandonment. Therefore, SEA recommends a new condition that UP be required to consult with IA DNR's Environmental Services Division (ESD) prior to initiating the salvage process regarding its storm water and fugitive dust emission regulations and to comply with ESD's reasonable requirements. Accordingly, the conditions recommended by SEA in the EA and the new conditions recommended by SEA will be imposed.

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 February 18, 2010, exempting the abandonment of the line described above, is subject to the conditions that UP shall: (1) prior to commencement of any salvage activities, consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of the Corps; (2)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the Area of Potential Effect that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed; (2)(b) report back to SEA regarding any consultations with the SHPO and the public; and (2)(c) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition; (3) prior to initiating salvage activities, consult with CRD to determine if the proposed abandonment would impact any rare species and/or significant natural communities and comply with CRD's reasonable requirements; and (4) consult with ESD prior to initiating the salvage process regarding its storm water and fugitive dust emission regulations and comply with ESD's reasonable requirements.

3. This decision is effective on its service date.

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