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SERVICE DATE – JULY 28, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 222X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN OUACHITA COUNTY, AR

Decided: July 27, 2009

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.6-mile line of railroad on the El Dorado Subdivision, extending from milepost 457.0 near Gilcrest to milepost 460.6 near El Dorado Junction, in Ouachita County, AR. Notice of the exemption was served and published in the Federal Register on May 31, 2006 (71 FR 30978-79). The exemption became effective on June 30, 2006. In this decision, the Board is granting the request by the City of Camden, AR (City), to extend the interim trail use/rail banking negotiation period.

By decision and notice of interim trail use or abandonment (NITU) served on June 27, 2006, the proceeding was reopened and a 180-day period was authorized for the City to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiation period under the NITU was extended by several decisions, with the most recent decision served on December 16, 2008.¹ The latest NITU extension expired on June 14, 2009.

On July 13, 2009, the City submitted a request for an additional 180-day extension of the NITU negotiating period. The City states that the negotiations between the parties had been delayed while the City obtained an appraisal for the subject property. The appraisal now has been completed and it anticipates that an agreement can be reached in a relatively short time. By letter dated July 13, 2009, UP stated that it is willing to continue to negotiate for interim trail use/rail banking with the City and supports the City's request.

¹ In addition to interim trail use, the NITU also imposed a public use condition that expired on December 27, 2006, and that may not be extended, and two environmental conditions. One of the conditions was an historic preservation condition, which was removed by decision served on September 28, 2006. The other environmental condition remains in effect.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from June 14, 2009, to December 11, 2009.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the negotiation period for an additional 180 days is granted.
2. The negotiating period under the NITU is extended to December 11, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

² See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).