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SERVICE DATE – DECEMBER 21, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN ELLIS
COUNTY, TX

Decided: December 19, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876). The exemption became effective on January 6, 2006.

By decision served on January 5, 2006, the proceeding was reopened and the exemption was made subject to three environmental conditions, which remain in effect. By decision and notice of interim trail use or abandonment (NITU) served on February 1, 2006, the proceeding was reopened again and a 180-day period was authorized for the City of Waxahachie, TX (the City), to negotiate an interim trail use/rail banking agreement with UP for the described line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The trail use negotiating period under the NITU was extended by decisions served on July 28, 2006, and October 27, 2006. The latest extension is scheduled to expire on December 28, 2006.

On December 12, 2006, the City filed another request to extend the NITU negotiating period for an additional 60 days. The City states that the parties have reached an agreement but additional time is needed to finalize contractual matters. By letter filed on December 14, 2006, UP states that it is willing to continue to negotiate with the City and that it supports the request to extend the negotiating period.

¹ On March 17, 2006, the Texas Department of Transportation (TXDOT) filed a request to replace the City in negotiating a trail use agreement with UP and for the issuance of a public use condition. By decision served on April 13, 2006, TXDOT was not authorized to replace the City with respect to trail use negotiations because TXDOT had not filed a NITU request. However, the decision did reopen the proceeding and a public use condition was imposed for the remainder of the 180-day period from January 6, 2006 (the effective date of the exemption), until July 5, 2006. The public use condition expired on July 5, 2006, and cannot be extended.

Where, as here, the carrier is willing to continue trail use negotiations, the NITU negotiating period may be extended.² An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 60 days from December 28, 2006, until February 26, 2007.

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to February 26, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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