

38525
DO

SERVICE DATE DECEMBER 3, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-170 (Sub No. 2X)

SUNSET RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KERN
COUNTY, CA

Decided: November 30, 2007

Sunset Railway Company (SRY) filed a notice of exemption under 49 CFR Subpart F—Exempt Abandonments and Discontinuances of Service for SRY to abandon a 0.20-mile line of railroad known as the Sunset Subdivision near Levee, between milepost 19.80 and milepost 20.00, in Kern County, CA. Notice of the exemption was served and published in the Federal Register on March 21, 2005 (70 FR 13570-71).¹ The exemption became effective on April 20, 2005.

By decision served April 19, 2005, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that SRY: (1) provide the National Geodetic Survey with 90 days' notice prior to salvage activities to plan for the relocation of the geodetic station markers; and (2) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C 470f (NHPA).

By letter dated August 7, 2007, Union Pacific Railroad Company (UP), which is a joint owner of SRY with BNSF Railway Company, requests that the section 106 condition imposed in the April 19, 2005 decision be removed. In support of its request, UP attached a letter dated May 11, 2007, that it sent to the California Office of Historic Preservation (State Historic Preservation Office or SHPO) advising that it had erroneously undertaken salvaging activities on the line on the mistaken belief that the section 106 process had been fulfilled. However, the SHPO informed UP that it could not comment on the effects that the abandonment may have on historic properties given that the salvage activities on the line had been completed. UP states that, based on SRY's historic report in this proceeding and a proceeding involving a connecting SRY line, the only structures located on the two connecting lines were timber pile bridges and metal deck

¹ The notice served and published on March 21, 2005, also embraced STB Docket No. AB-398 (Sub-No. 10X), San Joaquin Valley Railroad Company—Discontinuance Exemption—in Kern County, CA, in which San Joaquin Valley Railroad Company (SJVR) sought an exemption to discontinue service over the line. On May 20, 2005, counsel for SJVR advised the Board that, as of May 19, 2005, SJVR had canceled its tariffs and discontinued rail service over the 0.20-mile line.

bridges with timber piles, some of which were over 50 years old, and that, based on UP's observations, the bridges in question are not unique.

In a subsequent letter dated September 18, 2007, UP states that UP's historic preservation representative responsible for the oversight no longer works for UP. UP indicates that, to prevent a recurrence of this situation and to ensure compliance with the section 106 process, a paralegal in UP's law department has been assigned to oversee the section 106 process for abandonment proceedings that involve UP. UP states that this person has already undertaken these activities and is coordinating with the administrative staff and attorneys that are responsible for UP's abandonment program. After completion of the historic review, this person will coordinate with state SHPOs and obtain the necessary documentation that confirms completion of section 106 requirements. UP asserts that this process should provide for a more efficient, accurate, and comprehensive fulfillment of the section 106 process of the NHPA.

UP states that it is impossible to restore any historic property which may have existed prior to the salvaging process. However, it appears that the only structures on the line were the bridges identified in UP's May 2007 correspondence. UP also has instituted new internal procedures to prevent similar mistakes in the future. Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition be removed. Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

The Board takes section 106 of the NHPA very seriously and views any failure to comply with the section as a matter of great concern. Accordingly, the Board admonishes UP to take all necessary training, management, and oversight steps to avoid future section 106 problems.

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, the section 106 historic preservation condition imposed in the April 19, 2005 decision is removed.

3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary