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SERVICE DATE - NOVEMBER 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 137X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION--IN ADA COUNTY, ID

Decided: November 3, 1999

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon an 18.2-mile line of railroad on the Boise Subdivision, "Boise Cutoff" from milepost 424.80 near Orchard to milepost 443.0 near Hillcrest, in Ada County, ID. Notice of the exemption was served and published in the Federal Register on July 8, 1999 (64 FR 36968-69). The exemption became effective on August 7, 1999.

On July 15, 1999, Ada County (County), a political subdivision of the State of Idaho, and the Treasure Valley Regional Public Transportation Authority (Treasure Valley) each filed separate requests for the 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. On July 20, 1999, the City of Boise (City) filed a request for a 180-day public use condition for the entire line to afford local governments an opportunity to pursue acquisition of the right-of-way, structures, and rails for public use as a regional commuter rail system. On July 28, 1999, UP indicated that it was agreeable to a 180-day public use condition for the right-of-way, but was agreeable only to a 90-day public use negotiating period for the track structures. UP stated that, if it negotiated the sale of the right-of-way, including track structures, by November 1, 1999, it would use the funds to purchase replacement rail to be used at other locations. UP also requested that, if it was unable to negotiate the sale by that date, the public use condition, as applied to the track structures on the right-of-way, extend only until November 1, 1999, in order to permit it to remove the track structure as part of its attempt to conduct salvage operations before winter.¹

By decision served August 6, 1999, a NITU was served authorizing a 180-day period (until February 3, 2000) for the County and Treasure Valley to negotiate an interim trail use/rail banking agreement with UP. To permit the City and any other state or local government agency or interested

¹ UP stated that the right-of-way was being appraised and that it would immediately forward information to the City regarding the value of the track structure as soon as the appraisal was completed.

person to negotiate for acquisition of the facilities for public use, the decision also imposed (a) a 180-day public use condition that required UP to keep intact the right-of-way, including bridges, trestles, culverts and tunnels until February 3, 2000, and (b) a 90-day public use condition that required UP to keep the track, ties and signal equipment intact until November 5, 1999.

By facsimile received on October 29, 1999, and petition filed on November 1, 1999, the City has requested a 90-day extension of the public use condition as to the track structures. The City states that it has acted diligently in an attempt to conclude negotiations for acquisition of the line within the initial period allowed, but has been unable to do so through no fault of its own. The City states that, pursuant to Idaho law, three independent appraisals are required before purchasing property, that it had contracted for appraisals in early September, and that the appraisals were not received until early October. The City also states that UP raised several new points pertinent to the acquisition for the first time on October 14, 1999. The City further states that the full 90-day extension will be required to resolve the complex issues related to the acquisition.² The City attached the affidavit of Gery W. Edson, Counsel for the City, to support its statement.

As previously stated, under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period not more than 180 days after the effective date of the decision approving or exempting the abandonment. The City has demonstrated a need for the additional 90 days to negotiate acquisition of these properties for public use. Accordingly, the public use condition under 49 U.S.C. 10905 will be extended for an additional 90 days to February 3, 2000. As a result, the public use condition will extend until that date for both the right-of-way and the track structures.

As conditioned, 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 of the City to extend the public use condition under 49 U.S.C. 10905 is granted and the public use condition as it relates to track structures is extended to February 3, 2000.

² The August 6 decision included language stating that, because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, an extension of 90 additional days could be requested if a resolution was not reached in the initial 90-day period.

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2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary