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SERVICE DATE – MAY 14, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 201X)

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

Decided: May 13, 2008

By decision and notice of interim trail use or abandonment (NITU) served on September 12, 2003, the Board granted the petition for exemption filed by Union Pacific Railroad Company (UP) for abandonment of a 7.84-mile line of railroad, in the western portion of the Bristow Subdivision, extending from milepost 318.66, near Hampton, to milepost 326.50, near Coulter, in Franklin County, IA. The exemption was subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Iowa Trails Council (Council), on behalf of the Franklin County Conservation Board, to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The negotiating period was extended through April 18, 2008, by decisions served on March 26, 2004, September 23, 2004, March 4, 2005, September 13, 2005, February 24, 2006, September 13, 2006, March 27, 2007, September 11, 2007, October 19, 2007, and December 20, 2007.

On May 1, 2008, the Iowa Natural Heritage Foundation (INHF), on behalf of Franklin County and Council, filed a request to extend the NITU negotiating period, through July 30, 2008.<sup>1</sup> INHF states that the parties have been negotiating with UP but need additional time to complete the purchase. In a response filed on May 2, 2008, UP concurs in the request to extend the negotiating period, but only for 90 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted.

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<sup>1</sup> By letter filed on May 9, 2008, INHF stated that it has been asked to assist with the final negotiations with UP, and thus has submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for payment of any and all taxes that may be levied or assessed against the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to its continuing to meet these responsibilities and to possible future reactivation for rail service.

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

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 for an additional 90 days from April 18, 2008 (until July 17, 2008).<sup>3</sup> Given the time that has elapsed since abandonment was authorized, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

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 INHF to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to July 17, 2008.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary

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<sup>3</sup> Trail use/rail banking is voluntary and can be implemented only if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). Therefore, the negotiating period may be extended only for the agreed term of 90 days.