

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 265X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF TRackage RIGHTS EXEMPTION—IN LOS ANGELES COUNTY, CA

Decided: May 7, 2008

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon the Santa Monica Industrial Lead from milepost 485.61 to milepost 485.69 and to discontinue trackage rights from milepost 485.69 to milepost 486.00,¹ a total distance of 0.39 miles in the City of Los Angeles, Los Angeles County, CA. Notice of the exemption was served and published in the Federal Register on April 8, 2008 (73 FR 19136-37). The exemption is scheduled to become effective on May 8, 2008.²

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 11, 2008. In the EA, SEA stated that, although UP served its historic report on the California Department of Parks and Recreation's Office of Historic Preservation (State Historic Preservation Office or SHPO), the SHPO had not completed its review of the proposed abandonment. As a result, SEA stated that it has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing in the National Register of Historic Places. Accordingly, for the portion of the line that UP is proposing to abandon, SEA recommended in the EA that a condition be imposed requiring UP to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

¹ The portion of the line over which UP proposes to discontinue trackage rights was sold by UP's predecessor, Southern Pacific Transportation Company, to the Los Angeles Metropolitan Transportation Authority (Metro) in 1990.

² On April 16, 2008, James Riffin, describing himself as a Class III carrier, filed a notice of intent to file an offer of financial assistance in this matter and a petition to toll the due date for his filing of an offer of financial assistance (OFA). On April 23, 2008, UP replied to the Riffin filings and requested that the Board reject both. Those filings are being addressed in a separate decision.

Comments to the EA were due by April 28, 2008. SEA received two comments after issuance of the EA. A citizen, Mr. Gökhan Esirgen, submitted a comment expressing interest in having UP transfer ownership of the portion of the line proposed for abandonment to the Los Angeles Metropolitan Transportation Authority in order for that segment to be used for future light rail or commuter train operations. SEA states in its Post EA that it has requested the Board's Office of Public Assistance, Governmental Affairs, and Compliance to contact Mr. Esirgen regarding the subject of public use.

SEA further states that, in addition to his support for future public transit use, Mr. Esirgen believes that the rail line (between milepost 485.61 and milepost 486.00) should be preserved because of its historic value. SEA notes, however, that the Board's ability to protect historic properties is very limited, citing Implementation of Environmental Laws, 7 I.C.C.2d 807, 828-29 (1991). With regard to the portion of the line proposed for abandonment, SEA points out that the Board can impose a condition to prevent alteration or destruction of any historic resources prior to completion of the section 106 process of NHPA; it cannot, however, deny authority for a railroad to take an action that would otherwise meet the relevant statutory criteria solely on the grounds that it would adversely affect historic resources. According to SEA, documentation of the historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation the Board can require.

And as to the portion of the line proposed for discontinuance of trackage rights, SEA notes that no salvage operations are anticipated and that the Board cannot impose historic preservation conditions because this portion of the line is owned by Metro, not by UP.

Lastly, SEA notes that the National Geodetic Survey also submitted a comment stating that no geodetic survey markers are located in the area of the proposed project. Accordingly, SEA recommends no mitigation regarding geodetic station markers.

Accordingly, because no new conditions are recommended in the Post EA, the condition previously recommended by SEA in the EA will be imposed.

Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, 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 notice served and published in the Federal Register on April 8, 2008, exempting the abandonment of the line described above, is subject to the condition that UP shall retain its interest in the portion of the line between milepost 485.61 and milepost 485.69 and shall take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been

completed. UP shall report back to SEA regarding any consultations with the State Historic Preservation Office and the public. UP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

3. This decision is effective on its service date.

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

Anne K Quinlan
Acting Secretary