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SERVICE DATE - AUGUST 6, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: August 5, 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 is scheduled to become effective on August 7, 1999.¹

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 13, 1999. In the EA, SEA indicates that the right-of-way may be suitable for other public use following abandonment. 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) 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. The County and Treasure Valley request that UP be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that UP be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The County and Treasure Valley state that they need the full 180-day period to review title information, complete a trail plan, and commence negotiations with UP. The County and Treasure Valley submitted statements indicating their willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed July 19, 1999, and by facsimile received on July

¹ On July 19, 1999, the Idaho Public Utilities Commission filed a petition for rejection or for stay and reopening of the notice of exemption. In a decision in this proceeding served on August 6, 1999, the Board denied the petition for rejection or reopening, thus rendering the stay request moot.

29, 1999, UP indicated its willingness to negotiate with the County and Treasure Valley for interim trail use.

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. By letter filed July 28, 1999, UP indicated that it is agreeable to a 180-day public use condition for the right-of-way, but is agreeable only to a 90-day public use negotiating period for the track structures. UP states that, if it negotiates sale of the right-of-way, including the track structures, by November 1, 1999, it will use the funds to purchase replacement rail to be used at other locations on the track. UP also requests that, if it is not able to negotiate sale by that date, the public use condition, as it applies to the track structure on the right-of-way, expire by November 1, 1999, in order to permit it to remove the track structure as part of its attempt to complete salvage operations before the adverse weather during the winter months.²

The trail use request of the County and Treasure Valley comply with the requirements of 49 CFR 1152.29 and UP is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The parties have satisfied these requirements, but the record does not support a full 180-day period for the public use condition sought by the City as to the track structures. While the railroad's agreement is not necessary for the imposition of a public use condition, UP has provided sufficient basis for limiting the public use negotiation period at least initially to 90 days with respect to the track, ties, and signal equipment.³

When the need for interim trail use/rail banking and public use is shown, the Board normally imposes both conditions to begin concurrently. If a trail use agreement is reached on a portion of the

² UP states that the right-of-way is being appraised and it will immediately forward information to the City regarding the value of the track structure as soon as the appraisal has been completed.

³ Because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, should a resolution not be reached through negotiations within the 90-day period, an extension of up to 90 additional days may be requested.

right-of-way, UP must keep the remaining right-of-way intact for the running of the applicable period for trail use and public use negotiations. UP is required to leave bridges, culverts, and tunnels intact during the 180-day negotiation period, and must leave the track, ties, and signal equipment on the right-of-way for the initial 90-day period.⁴ A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use.

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. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on July 8, 1999, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the condition that UP keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels, for a period of 180 days from the August 7, 1999 effective date of the exemption (until February 3, 2000), and keep the track, ties and signal equipment intact for a period of 90 days from the August 7, 1999 effective date (until November 5, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

⁴ As noted, an extension of up to 90 days may be sought with respect to keeping track, ties, and signal equipment intact.

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6. If an agreement for interim trail use/rail banking is reached by February 3, 2000, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary