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SERVICE DATE – JUNE 27, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 222X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN OUACHITA COUNTY, AR

Decided: June 23, 2006

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.6-mile line of railroad on the El Dorado Subdivision, extending from milepost 457.0 near Gilcrest to milepost 460.6 near El Dorado Junction, in Ouachita County, AR. Notice of the exemption was served and published in the Federal Register on May 31, 2006 (71 FR 30978-79). The exemption is scheduled to become effective on June 30, 2006.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on June 5, 2006. In the EA, SEA states that the National Geodetic Survey (NGS) has advised that 18 geodetic station markers have been identified that may be affected by the proposed abandonment. Accordingly, SEA recommends that UP be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for possible relocation by NGS of the geodetic station markers.

SEA also states that the Department of Arkansas Heritage, Arkansas Historic Preservation Program (State Historic Preservation Office or SHPO) had not completed its review of the proposed abandonment. Therefore, SEA recommends that UP be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), that UP be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and that UP not be allowed to file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.

No comments to the EA were received by the June 20, 2006 due date. Therefore, the environmental conditions recommended by SEA in the EA will be imposed.

On June 12, 2006, the City of Camden, AR (City) filed a request for 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,<sup>1</sup> to negotiate with UP for acquisition of the right-of-way as a recreational trail. The City has submitted a statement of 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way for trail purposes, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on June 19, 2006, UP states that it is willing to negotiate with the City for interim trail use and supports its request.

Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued for the subject line. 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 noted above, the City also requested a 180-day public use condition. The City requests that UP be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that UP be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment. The City states that the time period is needed to review the information, complete a trail plan and begin negotiations with UP.

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). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

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). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 30, 2006 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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

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<sup>1</sup> SEA indicated in the EA that the right-of-way may be suitable for other public use following abandonment.

been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, this action 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 May 31, 2006, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the June 30, 2006 effective date of the exemption (until December 27, 2006), and subject to the conditions that UP shall: (1) notify the NGS at least 90 days prior to beginning salvage activities in order to plan for possible relocation by NGS of the geodetic station markers; and (2) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (generally, 50 years old or older) until completion of the section 106 process of the NHPA, report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and not file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, UP may discontinue service and salvage track and related materials. UP shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days 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 December 27, 2006, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. 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.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. 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.

7. If an agreement for interim trail use/rail banking is reached by December 27, 2006, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed in this proceeding are met.

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

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

Vernon A. Williams  
Secretary