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Service Date - December 20, 1996

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SURFACE TRANSPORTATION BOARD

DECISION

[STB Docket No. AB-33 (Sub-No. **IOOX**)

UNION PACIFIC@@ RAILROAD COMPANY--DISCONTINUANCE OF
SERVICE--IN WASHINGTON COUNTY, ID

Decided: December 16, 1996

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F-- Exemlot Abandonments and Discontinuances of Service to abandon a 0.50-mile portion of the New Meadows Branch from milepost 0.50 to the end of the line at milepost 1.00, near Weiser, in Washington County, ID. Notice of the exemption was served and published in the Federal Register on July 29, 1996 (61 FR 39512). The exemption was scheduled to become effective on August 28, 1996. On September 18, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for the City of Weiser, ID (City), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The negotiation period under the NITU is scheduled to expire on February 24, 1997.¹

On December 6, 1996, Friends of the Weiser River Trail, Inc. (Weiser) a new negotiation party, filed a request for a notice of interim trail use (NITTJ) for the entire line, under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). Weiser submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability 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 as a trail- is subject to future reactivation for rail service. on December 11, 1996, UP indicated its willingness to negotiate with Weiser over trail use/rail banking of the line.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way' and the carrier is willing to enter into negotiations. Inasmuch as UP has not consummated the abandonment and is willing to negotiate with Weiser for trail use over the right -of-way, a NITU will be issued, with the trail use negotiation period running for 180 days from the service date of this decision, or until June 18, 1997. If no agreement is reached within that time period, UP may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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¹ The September 18 decision also imposed a 180-day public use condition requiring UP to leave the right-of-way intact, including bridges, culverts, bridges, and similar structures (but not tracks and signal equipment) for a period of 180 days from the August 28, 1996 effective date of the exemption (i.e., until February 24, 1997). The scheduled February 24, 1997 expiration of the public use condition is unaffected by the present decision.

² See Rail Abandonments--Supplemental Trails Act Procedures, 4 I. C.C.2d 152, 157-58 (1987), Soo Line Railroad Company-- Exemption-- Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23x) (ICC served May 14, 1987), and Missouri Kansas- Texas Railroad Company--Abandonment-- in Petits and Henry Counties, MO Docket No. ab10(Sud-no.16 (ICC served Apr.26, 1991).

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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 29, 1996, 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 until June 18, 1997
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), 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 obligations of 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 specific date.
6. If an agreement for interim trail use / rail banking is reached by June 18, 1997 interim trail use may be implemented. If no agreement is reached by that time, Up may fully abandon the line.
7. The decision is effective on the service date.

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

Vernon A. Williams
Secretary

line.

7. The decision is effective on the service date.