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SERVICE DATE – SEPTEMBER 17, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 258X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN SHELBY COUNTY, TN

Decided: September 16, 2008

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.61-mile line of railroad known as the Memphis Subdivision, extending from milepost 387.0 to milepost 389.61 in Shelby County, TN. Notice of the exemption was served and published in the Federal Register on August 20, 2008 (73 FR 49240). The exemption is scheduled to become effective on September 19, 2008.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on August 25, 2008. In the EA, SEA states that the National Geodetic Survey (NGS) has advised that one geodetic station marker has been identified that may be affected by the proposed abandonment. Accordingly, SEA recommends that UP be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

SEA also states that the Tennessee Department of Environment and Conservation, Water Pollution Control Office (DEQ), has indicated that an Aquatic Resource Alteration Permit may be required if there are any alterations to waters of the state or if one acre or more of land would be disturbed by the proposed abandonment. Therefore, SEA recommends that UP be required to consult with DEQ prior to the onset of salvage activities regarding potential impacts to wetlands or water resources.

SEA notes that the U.S. Fish and Wildlife Service (FWS) has provided comments indicating that there are no known federally listed or proposed endangered or threatened species within the area of the proposed abandonment, but that FWS recommends that several measures be implemented in the event any post abandonment activities would impact aquatic resources or stream substrate. SEA also notes that FWS has asked that tree removal be minimized, that soil disturbance in the vicinity occur during the driest season in order to minimize erosion, and that revegetation of any disturbed areas be accomplished as soon as possible following any salvage activities. Therefore, SEA recommends that UP be required to consult with FWS regarding potential impacts to aquatic resources that could occur as a result of salvage activities conducted along the line.

No comments to the EA were received by the September 9, 2008 due date. Therefore, the environmental conditions recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On September 2, 2008, Greater Memphis Greenline (GMG) filed a request for issuance of a notice of interim trail use (NITU) for the 2.61-mile line of railroad under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and for a public use condition under 49 U.S.C. 10905. GMG has submitted a statement of willingness to assume full 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 dated September 3, 2008, UP states that it is willing to negotiate with GMG for interim trail use for a period of 180 days following abandonment authorization.

Because GMG'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 2.61-mile 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, subject to the conditions imposed below. 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, GMG also requested the imposition of a 180-day public use condition. GMG 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. GMG states that the time period is needed to review title information, complete a trail plan and raise monies to purchase the property.

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 GMG has met these requirements, a 180-day public use condition will be imposed, commencing from the September 19, 2008 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 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 GMG, 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 August 20, 2008, 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 September 19, 2008 effective date of the exemption (until March 18, 2009), and subject to the conditions that UP shall:  
(1) consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; (2) consult with DEQ prior to the onset of salvage activities regarding potential impacts to wetlands or water resources; and (3) consult with FWS regarding potential impacts to aquatic resources that could occur as a result of salvage activities conducted along the line.
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 March 18, 2009, 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 March 18, 2009, 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. See 49 CFR 1152.29(d)(1).

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

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

Anne K. Quinlan  
Acting Secretary