

SERVICE DATE - APRIL 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 214X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
LANE, NESS AND RUSH COUNTIES, KS

Decided: April 20, 2005

By decision and notice of interim trail use or abandonment (NITU) served on October 15, 2004, a 180-day period was authorized for Sunflower Recreational Trails, Inc. (Sunflower) to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for a 58.5-mile line of railroad extending from milepost 664.5, near Healy, to milepost 606.0, near McCracken, in Lane, Ness and Rush Counties, KS. The trail use negotiating period expired on April 13, 2005.¹

On April 13, 2005, Sunflower submitted a request for a 180-day extension of the NITU negotiating period until October 9, 2005.² Sunflower states that the additional time is needed due to ongoing negotiations with UP. Concurrently, UP filed its response in support of the extension request, stating that it is willing to continue negotiations with Sunflower.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly,

¹ The October 15, 2004 decision embraced STB Finance Docket No. AB-853 (Sub-No. 2X), Kansas & Oklahoma Railroad, Inc.—Discontinuance Exemption—in Lane, Ness and Rush Counties, KS. The October decision also imposed (a) a public use condition, which is scheduled to expire on May 13, 2005, and may not be extended, and (b) an environmental condition that required UP to notify the National Geodetic Survey 90 days prior to salvage activities to plan for relocation of the 54 geodetic station markers located along the line, which remains in effect.

² Because the NITU expired on April 13, 2005, a 180-day extension would run until October 10, 2005.

the NITU negotiating period will be extended for an additional 180 days from April 13, 2005, until October 10, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Sunflower's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until October 10, 2005.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary