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SERVICE DATE – MAY 14, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 200X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION –  
IN FRANKLIN AND BUTLER COUNTIES, IA

Decided: May 13, 2008

On September 26, 2003, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the Iowa Trails Council (Council), on behalf of the Franklin and Butler Counties Conservation Boards, to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for a 23.61-mile line of railroad, known as the eastern portion of the Bristow Subdivision, extending from milepost 318.36 near Hampton to milepost 294.75 near Allison, in Franklin and Butler Counties, IA. The negotiating period under the NITU was extended by decisions served on March 24, 2004, September 17, 2004, March 24, 2005, September 14, 2005, April 13, 2006, October 16, 2006, March 30, 2007, September 6, 2007, November 5, 2007, and February 4, 2008. The latest extension expired on May 3, 2008.

On May 1, 2008, the Iowa Natural Heritage Foundation (INHF), on behalf of Franklin County, Butler County, and the Council, filed a request to extend the NITU negotiating period to July 30, 2008.<sup>1</sup> INHF states that the parties have been negotiating with UP but need additional time to complete the purchase. In a letter dated May 2, 2008, UP states that it is willing to continue negotiating with the parties and consents to a 90-day extension, which includes the requested extension period through July 30, 2008.

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.<sup>2</sup> Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d

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<sup>1</sup> By letter filed on May 9, 2008, INHF stated that it has been asked to assist with the final negotiations with UP, and thus has submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to its continuing to meet these responsibilities and to future reactivation for rail service.

<sup>2</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to July 30, 2008.

Given the time that has elapsed since abandonment was authorized, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The request of INHF to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to July 30, 2008.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary