

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 108X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN CONTRA COSTA COUNTY, CA

Decided: April 25, 1997

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments and Discontinuances of Trackage Rights* to abandon and discontinue service over a 1.845-mile portion of its line of railroad known as the Port Chicago Industrial Lead from the end of the line at milepost 37.06 near Clyde, to milepost 38.905 near Port Chicago, in Contra Costa County, CA. Notice of the exemption was served and published in the *Federal Register* on March 11, 1997 (62 FR 11251). The exemption became effective on April 10, 1997.

By petition filed April 14, 1997, the Town of Clyde, by the Clyde Civic Improvement Association, Inc. (Clyde),<sup>1</sup> filed a request for a notice of interim trail use/rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29,<sup>2</sup> and a 180-day public use condition so that it could negotiate with UP for use of the line as a recreational trail.<sup>3</sup> Clyde submitted a statement indicating its willingness to assume full responsibility for management of, liability arising out of the transfer or use 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.

By letter filed April 17, 1997, UP states that it is not willing to negotiate with Clyde for interim trail use. UP further states that it has consummated the abandonment authorization effective April 10, 1997, and that the United States Navy and Contra Costa County have expressed interest in acquiring portions of the right-of-way.<sup>4</sup> Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. *See Rail Abandonment--Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*).

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<sup>1</sup> Clyde also filed a pleading with the Board's Section of Environmental Analysis dated April 8, 1997, that was made part of the record on April 10, 1997. Clyde states that it is responding to environmental documents filed with the Board. However, Clyde's concerns appear to be limited to environmental impacts of the subsequent sale of the line following abandonment. The Board's jurisdiction ends when a carrier consummates an abandonment and SEA's environmental analysis is likewise limited to the potential effects of salvage of the line and diversion of traffic, if any, to other modes. Clyde's concerns are not within the Board's purview. The letter will be included in the evidentiary record in this proceeding.

<sup>2</sup> The March 11 notice provided that requests for trail use/rail banking had to be filed by March 21, 1997. The notice stated, however, that the Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

<sup>3</sup> Clyde's request for a public use condition is moot, because a public use condition has already been imposed in the decision served April 11, 1997, for 180 days commencing from the effective date of the abandonment exemption. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

<sup>4</sup> UP states that the trackage has not been salvaged.

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

*It is ordered:*

1. The requests for issuance of a notice of interim trail use/rail banking is denied and the request for a public use condition is moot.
2. This decision is effective on the service date.

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

Vernon A. Williams  
Secretary