

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 251X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT
EXEMPTION–IN DANE COUNTY, WI

Decided: May 31, 2005

Union Pacific Railroad Company (UP) and Wisconsin & Southern Railroad Company (WSOR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for UP to abandon and WSOR to discontinue service over a 4.4-mile line of railroad, known as the Central Soya Line, Harvard Subdivision, between milepost 85.5 in the City of Madison and milepost 89.9 in the City of Fitchburg, in Dane County, WI. Notice of exemption was served and published in the Federal Register on May 2, 2005 (70 FR 22758). The exemption is scheduled to become effective on June 1, 2005.¹

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment in this proceeding on May 6, 2005. Comments to the EA were due by May 23, 2005. In the EA, SEA states that the Wisconsin Historical Society (SHPO) had not completed its assessment of the proposed abandonment at the time the EA was prepared. The SHPO has requested additional information from UP to comply with its new process guidelines and has not yet completed its assessment of the potential impact of this project on historic resources. Therefore, SEA recommends that a condition be imposed requiring that UP retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

SEA also states that the U.S. Environmental Protection Agency (EPA), Region 5, has expressed concerns about the removal and salvage methods to be used by UP during the proposed abandonment, the final disposition of crossties preserved with creosote, right-of-way access during salvage operations, procedures for storing and fueling of construction equipment, soil erosion and stormwater runoff mitigation practices to be utilized during abandonment activities, revegetation methods, and bridge and culvert maintenance activities following

¹ While the notice embraced the proposed discontinuance in STB Docket No. AB-383 (Sub-No. 4X), Wisconsin & Southern Railroad Company-Discontinuance of Service Exemption-in Dane County, WI, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

abandonment. Therefore, to address the concerns of the EPA, Region 5, SEA recommends that, prior to commencement of any salvage activities, UP contact EPA, Region 5 (Kathleen Kowal, 312-353-5206), concerning removal and salvage methods to be used by UP during the proposed abandonment, the final disposition of crossties preserved with creosote, right-of-way access during salvage operations, procedures for storing and fueling of construction equipment, soil erosion and stormwater runoff mitigation practices to be utilized during abandonment activities, revegetation methods, and bridge and culvert maintenance activities following abandonment.

SEA indicated that the right-of-way may be suitable for other public use. On May 9, 2005, the Wisconsin Department of Natural Resources (WisDNR) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, to enable it to negotiate with UP for use of the line as a trail. WisDNR also submitted a statement of willingness to assume 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 taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response submitted on May 24, 2005, UP indicated a willingness to negotiate with WisDNR for interim trail use and rail banking for the line.

Because WisDNR'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. 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, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d) (1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

No comments to the EA were received by the May 23, 2005 due date. Accordingly, the conditions recommended by SEA will be imposed.

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 May 2, 2005, 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 for a period of 180 days from the service date of this decision and notice (until November 28, 2005), and

subject to the conditions that UP shall: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA; and (2) consult with the EPA, Region 5, (Kathleen Kowal, 312-353-5206), prior to commencement of any salvage activities, concerning removal and salvage methods to be used by UP during the proposed abandonment, the final disposition of crossties preserved with creosote, right-of-way access during salvage operations, procedures for storing and fueling of construction equipment, soil erosion and stormwater runoff mitigation practices to be utilized during abandonment activities, revegetation methods, and bridge and culvert maintenance activities following abandonment.

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), and 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 for 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 specified date.

6. If an agreement for interim trail use/rail banking is reached by November 28, 2005, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

7. This decision and notice is effective on its date of service.

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

Vernon A. Williams
Secretary