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SERVICE DATE – DECEMBER 9, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 140)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
LANCASTER AND GAGE COUNTIES, NEB., AND MARSHALL COUNTY, KAN.

Docket No. AB 33 (Sub-No. 208X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MARSHALL COUNTY, KAN.

Decided: December 8, 2014

On October 8, 2014, the Nebraska Trails Foundation (Foundation), together with the Marshall County Connection, Inc. (MCC) (jointly, petitioners), filed a joint petition requesting that MCC be substituted for the Foundation as interim trail sponsor with respect to certain portions of two rail lines that Union Pacific Railroad Company (UP) received permission to abandon in December 1999 and December 2003. On October 9, 2014, UP replied with no objection to the petition to substitute. This decision grants the petitioners' request.

By decision and certificate of interim trail use or abandonment (CITU) served December 17, 1999,¹ the Board granted UP's application to abandon a 57.72-mile rail line known as the Beatrice Branch extending from milepost 66 near Jamaica, Neb., to milepost 125 near Marietta, Kan., in Lancaster and Gage Counties, Neb., and Marshall County, Kan., and authorized a 180-day period for the City of Beatrice, the Foundation, and the Lower Big Blue Natural Resources District to negotiate an interim trail use/rail banking agreement with UP for the Beatrice Branch.² The negotiating period under the NITU was extended several times; the final extension expired on December 6, 2001.³ By letter filed on March 12, 2002, UP notified the Board that the Beatrice Branch was conveyed to the Foundation pursuant to the National Trails Act, 16 U.S.C. § 1247(d).

¹ A corrected decision was served on December 22, 1999.

² Notice of the filing of the application was served and published in the Federal Register on September 20, 1999 (64 Fed. Reg. 50,863).

³ The final extension of the negotiation period under the NITU was authorized by decision served June 8, 2001.

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2003, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by UP of an 8.13-mile line of railroad from milepost 133.13 near Marysville to milepost 125.00 near Marietta, in Marshall County, Kan., and authorized a 180-day period for UP to negotiate an interim trail use/rail banking agreement with the Foundation. The negotiating period under the NITU was extended several times; the final extension expired on December 8, 2005.⁴ By letter filed on December 13, 2005, UP notified the Board that UP discontinued service and that the line in Docket No. AB 33 (Sub-No. 208X) was conveyed to the Foundation pursuant to the National Trails Act, 16 U.S.C. § 1247(d).

In their October 6, 2014 request to substitute trail sponsors, petitioners state that, in November 2005, the Foundation transferred its title to the right-of-way from the Nebraska State Line milepost 121.25 to milepost 133.13 near Marysville, Kan., to MCC, a non-profit 501(c)(3) foundation.⁵ They state that MCC has developed eight of the 11.88 miles of rail line into a trail.⁶ Petitioners indicate that the Foundation failed to notify the Board about the transfer of ownership to MCC in 2005 and is now requesting that the Board allow this transfer of ownership.

Petitioners provide a statement of willingness to assume financial responsibility for interim trail use and rail banking in accordance with 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Petitioners acknowledge that the use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the Board will grant the petitioners' request and a replacement NITU will be issued.

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. The CITU served on December 17, 1999, and the NITU served on December 17, 2003, are vacated.
3. A replacement NITU applicable to: (1) MCC as the new interim trail sponsor for the line from milepost 121.25 to milepost 133.13; and (2) the Foundation as interim trail sponsor for the remainder of the line from milepost 66 to milepost 121.25, is issued, effective on the service date of this decision and notice.

⁴ The final extension of the negotiation period under the NITU was authorized by decision served September 21, 2005.

⁵ Pet. 1.

⁶ Id.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.