

2113 9
DO

SERVICE DATE - LATE RELEASE NOVEMBER 20, 1996

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-12 (Sub-No. 187X)²

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT
EXEMPTION--SEABROOK-SAN LEON LINE IN GALVESTON
AND HARRIS COUNTIES, TX

Decided: November 13, 1996

Southern Pacific Transportation Company (SPT) filed a notice of exemption under 49 CFR part 1152 Subpart F--Exempt Abandonments and Discontinuances to abandon approximately 10.5 miles of its Seabrook-San Leon Line from milepost 30.0 near Seabrook, to milepost 40.5 near San Leon, in Galveston and Harris Counties, TX. Notice of the exemption was served and published in the Federal Register on August 12, 1996 (61 FR 41827-28).³ A 90-day public use condition was imposed under 49 U.S.C. 10906 at the joint request of the Texas Department of Transportation (Tex DOT) and the Texas Parks and Wildlife Department (TPW). The condition required that SPT keep the right-of-way intact, including bridges, culverts, and similar structures, for a period of 90 days after the September 11, 1996 effective date of the exemption to permit Tex DOT, TPW, and any other state or local government agency, or other interested person, to negotiate for acquisition of the line for public use. The 90-day period will expire on December 10, 1996.

By petition filed November 4, 1996, City of Dickinson (City), a governmental subdivision of the State of Texas, filed a request for issuance of: (1) a 180-day public use condition so that it could negotiate with SPT for use of the line as a bicycle and pedestrian trail for transportation and recreation;⁴ and (2) a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d).

The City requests that SPT be prohibited from disposing of the corridor, except for public use on reasonable terms, and that SPT be barred from removing or destroying any trail-related structures such as bridges, trestles, culverts, and ballast for a 180-day period from the effective date of the abandonment exemption. The City states that it needs the full 180-day period of time because it has not had the opportunity to complete evaluation of the corridor for acquisition, to resolve competing/compatible uses, or to commence negotiations with SPT. It also has submitted

¹The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, and effective on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This proceeding was pending with the ICC prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This proceeding was pending with the ICC prior to January 1, 1996, and relates to functions retained by the ICCTA. This proceeding was pending with the ICC prior to January 1, 1996, and relates to functions retained under Board jurisdiction pursuant to new 49 U.S.C. 10903. Citations are to the former sections of the statute, unless otherwise indicated.

²This proceeding is related to Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Souther Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP).

³The abandonment is subject to historic and environmental mitigating conditions imposed in UP/SP, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996), slip op. at 281-84.

⁴The August 12 decision also provided that requests for trail use/rail banking had to be filed by August 22, 1996. The decision 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.

a statement of willingness to assume financial responsibility for interim trail use and rail banking in

STB Docket No. AB-12 (Sub No. 187X)

compliance with 49 CFR 1152.29 and acknowledges that use of the right-of-way for trail purposes is subject to possible future construction and reactivation of the right-of-way for rail service. By letter filed November 7, 1996, SPT indicates its willingness to negotiate with the City for interim trail use.⁵

Inasmuch as SPT has not consummated the abandonment and has indicated a willingness to negotiate, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate any agreement during the 180-day period from the August 12, 1996 service date of the decision accepting the notice. See UP/SP, Finance Docket No. 32760, Decision No. 44, slip op. at 216 ("In issuing the NITUs and CITUs and imposing the public use conditions, we will follow our usual practice and have the 180-day Trails Act period run from the service date of the decision while the public use condition will run from the effective date of the decision.,) Here, while the negotiation period for interim trail use/rail banking could run for 180 days from the service date of this decision, we will provide for it to run concurrently with the public use condition, as extended below, and hence to expire on March 10, 1997.

While the City requested a 180-day public use condition, a 90-day public use condition has already been imposed in this proceeding in the August 12, 1996 decision. The public use condition was not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person, including the City, to acquire the right-of-way that has been found suitable for public purposes. Therefore, the public use condition will be extended for an additional 90 days so that the City may negotiate with SPT to acquire the right-of-way for public purposes until March 10, 1997.

The City's submission meets the requirements for public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying: (a) the condition sought; (b) the public importance of the condition; (c) the period of time for which the condition would be effective; and (d) justification for the imposition of the period of time requested.

The parties may negotiate an agreement for trail use or public use until March 10, 1997. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached by that date, SPT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10906, Rail Abandonments - Use of Rights-of-Way as Trails 2 I.C.C.2d 591 (1986).

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served and notice published in the Federal Register on August 12, 1996, is modified to the extent necessary to implement interim trail use/rail banking, as set forth below, and is subject to the conditions that SPT shall: (a) keep intact the right-of-way underlying the track, including bridges, culverts, and similar structures for a period of 180 days (until March 10, 1997), to enable any State or local govern agency, or other interested persons, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will

⁵SPT also notes that the U.S. Coast Guard or Army Corps of Engineers may require SPT to remove the bridge at milepost 31.99 over the Clear Creek during the period of negotiation.

expire to the extent the trail use/rail banking agreement covers the same line.

STB Docket No. AB-12 (Sub-No. 187X)

3. Subject to the conditions imposed in the decision served August 12, 1996, SPT may discontinue service, and salvage track and related materials consistent with the interim trail use/rail banking after the effective date of this decision and notice.

4. 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.

5. 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.

6. 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 specific date.

7. If an agreement for interim trail use/rail banking is reached by March 10, 1997, interim trail use may be implemented.

8. If no agreement is reached by the March 10, 1997, the expiration of the public use condition, SPT may fully abandon the line, provided the conditions imposed in the decision served August 12, 1996, are met.

9. This decision is effective on the service date.

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

Vernon A. Williams
Secretary