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SERVICE DATE – JANUARY 23, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 298X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
FREEBORN COUNTY, MINN.

Decided: January 20, 2012

This decision grants a request to extend the time to negotiate a trail use/rail banking agreement but denies a request to extend the public use condition.

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a line of railroad, known as the Hartland Subdivision, from milepost 119.65 at Curtis, to the point of connection with the Albert Lea Subdivision, and to the end of UP ownership at milepost 107.0 near Hartland, a distance of 12.65 miles, in Freeborn County, Minn. Notice of the exemption was served and published in the Federal Register on June 22, 2011 (76 Fed. Reg. 36,617). The exemption became effective on July 22, 2011.

By decision and notice of interim trail use or abandonment (NITU) served on July 21, 2011, the proceeding was reopened and the County of Freeborn, Minn. (the County) was authorized to negotiate with UP for interim trail use for a 180-day period from the date of the decision (until January 17, 2012). That decision also permitted public use negotiations for a 180-day period from the effective date of the abandonment exemption (until January 18, 2012).

On January 6, 2012, the County filed a request to extend both the NITU negotiating period and the public use condition for an additional 180 days. The County states that the time is needed to complete negotiations. In a response filed on January 17, 2012, UP states that it is willing to extend the NITU negotiating period and supports the County's request for a 180-day extension of the negotiating period under the NITU.

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>1</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir.

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<sup>1</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days, to July 15, 2012.

The County's request to extend the public use condition, however, will be denied. The maximum period permitted by statute for a public use condition is 180 days, and the condition may not be extended beyond that time. See 49 U.S.C. § 10905.

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

It is ordered:

1. The County's request to extend the NITU negotiating period for an additional 180 days is granted.
2. The NITU negotiating period is extended to July 15, 2012.
3. The County's request to extend the public use condition is denied.
4. This decision is effective on its service date.

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