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SERVICE DATE – MAY 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 175X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN
HAMILTON COUNTY, IA

Decided: May 5, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its Ellsworth Industrial Lead, a 3.2-mile line of railroad, between milepost 0.0, near Jewell, and milepost 3.2, at Ellsworth, in Hamilton County, IA. Notice of the exemption was served on March 29, 2006, and published in the Federal Register on April 4, 2006 (71 FR 16855-56). The exemption became effective on April 28, 2006.¹

On April 12, 2006, the Iowa Trails Council (Council), on behalf of itself and the Hamilton County Conservation Board, requested the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. The Council has submitted a statement of willingness to assume financial responsibility for the 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, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on April 14, 2006, UP states that it is willing to negotiate with the Council for interim trail use.

¹ By decision served on April 28, 2006 (April 28 decision), the proceeding was reopened and the exemption was made subject to a public use condition that extends until October 25, 2006, and also to the conditions that UP shall: (1) in the event the proposed project involves the removal of bridges, remove all fill material to an upland, non-wetland site; remove all pilings to at least one foot below streambed elevations; seed all disturbed areas with native grasses; and take measures to ensure that sediments are not introduced into waters of the United States; and (2) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, and report back to the Board's Section of Environmental Analysis regarding any consultation with the Iowa State Historic Preservation Office or any other party consulted during the section 106 process.

Because the Council'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 subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations.

As conditioned, 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 decision served on March 29, 2006, and published in the Federal Register on April 4, 2006, exempting the abandonment of the line described above, and the April 28 decision, reopening the proceeding and making the exemption subject to a public use condition and several environmental conditions, are modified to the extent necessary to implement trail use/rail banking as set forth below. The Council may negotiate with UP for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until November 4, 2006), and subject to the conditions imposed in the April 28 decision. If an interim trail use/rail banking agreement is executed before October 25, 2006, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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 4, 2006, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary