

SERVICE DATE - FEBRUARY 28, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-433 (Sub-No. 2X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--
ABANDONMENT AND DISCONTINUANCE EXEMPTION--
IN WASHINGTON AND ADAMS COUNTIES, ID

Decided: February 24, 1997

On December 28, 1995, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding which authorized a 180-day period for the Idaho Department of Parks and Recreation (IDPR) to negotiate an interim trail use/rail banking agreement with Idaho Northern & Pacific Railroad Company (IN&P).² The NITU negotiation period was scheduled to expire on June 25, 1996.

By letter dated May 31, 1996, IDPR requested a 180-day extension of time until December 21, 1996, to negotiate under the NITU. IDPR stated that the parties had been delayed in their negotiations because IN&P had recently transferred the corridor to Union Pacific Railroad Company (UP), and that IDPR now had to start the negotiation process with UP. By letter filed June 14, 1996, UP agreed to the extension request and indicated that the involved line had been reconveyed to it on May 14, 1996.

On June 17, 1996, the Coalition of Concerned Citizens (CCC) asked the Board to reject IDPR's extension request because the request was submitted in an untimely fashion and was made without

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect 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 decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 16 U.S.C. 1247(d). Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² On March 17, 1995, IN&P had filed a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to: (1) abandon approximately 83.1 miles of rail line between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, ID; and (2) discontinue trackage rights over a rail line currently owned and operated by Union Pacific Railroad Company (UP) between milepost 0.0 and milepost 1.0 in Weiser, ID. By decision served November 1, 1995, an exemption was granted, subject to standard labor protective, environmental, and public use conditions. The exemption became effective on December 1, 1995.

notification to adjacent property owners or members of the public in Washington and Adams Counties. On June 21, 1996, two additional NITU requests for 180 days each were filed by Friends of the Weiser River Trail, Inc. (Friends) and the City of Weiser, ID (the City).³ By letter received June 24, 1996, UP agreed to negotiate with those parties for trail use.

By decision served July 5, 1996, the Board, by order of the Director of the Office of Proceedings directed this proceeding to be held in abeyance to allow IN&P and UP to clarify the status of the 83.1-mile line between Weiser and Rubicon, ID. The Board concluded that the statement made in IDPR's May 31 letter (that IN&P had recently transferred the corridor to UP) and UP's statement in its June 14 letter (that the involved line had been reconveyed to it) raised questions that needed addressing prior to Board action on the NITU extension request. Specifically, the Board noted that it was not clear how IN&P could have conveyed the property to UP without violating the terms of the NITU issued by the former Interstate Commerce Commission (ICC) on December 28, 1995. Nor was it clear how IN&P could have conveyed the property, an active line of railroad, because abandonment had not been consummated, to UP without Board authorization. On July 12, 1996, IN&P and UP jointly filed a response to the Board's July 5 decision.

By decision served November 14, 1996, the Board stated that because the line had not been fully abandoned, it was subject to Board jurisdiction at the time UP acquired it from IN&P; that the acquisition of a line of railroad by a rail carrier from another rail carrier is a transaction subject to Board jurisdiction under 49 U.S.C. 11323(a)(2); and that UP's acquisition of the line required, but had not received, Board approval under section 11323 or exemption from that approval under section 10502. Accordingly, the Board: (1) continued to hold the proceeding (including the NITU extension request) in abeyance pending further order; (2) directed UP either to undo its acquisition from IN&P of the subject rail line or to file an application or a request for exemption to acquire the line within 30 days of the November 14 service date; and (3) denied a petition for administrative review.⁴

In compliance with the Board's November 14 decision, UP filed a notice of exemption on December 12, 1996 in Union Pacific Railroad Company--Acquisition Exemption--Idaho Northern & Pacific Railroad Company, STB Finance Docket No. 33305 (STB served Jan. 3, 1997), to acquire the involved line of railroad from IN&P, subject to negotiations for trail use. UP noted in the notice of exemption that it had no plan to reactivate rail service on the

³ The City had actually sought trail use over a .5 mile segment of line not included in the 83.1 miles of rail line in this proceeding. On July 29, 1996, the Board exempted UP's abandonment of the .5 mile segment in Union Pacific Railroad Company--Discontinuance of Service Exemption--in Washington County, ID, STB Docket No. AB-33 (Sub-No. 100X) (STB served July 29, 1996). The City filed a NITU request in that proceeding, which request was granted in a decision and notice of interim trail use or abandonment served September 18, 1996.

⁴ On July 24, 1996, Ron D. Blendu, Donna Servatius, and Dave C. Springer, on behalf of CCC, filed a petition for administrative review of the July 5 decision.

line at the present time, although reactivation for rail service would be possible in the future if the line were conveyed to a trail user under the Trails Act; and that, if trail use negotiations were unsuccessful, it would abandon the line pursuant to the authorization granted in Docket No. AB-433 (Sub-No. 2X).

By letter filed December 10, 1996, IDPR had notified the Board that Friends would take its place as the new trail use negotiating party.⁵ By letter filed January 13, 1997, UP agreed to the pending extension request and suggested that the negotiation period be extended for a period of 180 days from the service date of this decision.

DISCUSSION AND CONCLUSIONS

The purpose of section 1247(d) of the Trails Act, 16 U.S.C. 1247(d), is to preserve rail corridors for possible reactivation of rail service (rail banking) by permitting and encouraging their interim use as recreational trails. See Ex Parte No. 274 (Sub-No. 13B), Policy Statement on Rails to Trails Conversions, 55 FR 4026-28 (Feb. 6, 1990). The Trails Act ensures that the right-of-way remains intact by authorizing interim trail use before abandonment occurs.

Because the railroads here have continually agreed to negotiate for trail use, abandonment of this line has not been consummated, Board jurisdiction over the matter continues, and the NITU originally issued in December 1995 may be extended. Moreover, as the new owner of the line, UP, is willing to continue trail use negotiations and has agreed to a new 180-day negotiating period, the sought extension will be granted.⁶ An extension of time here will promote the establishment of trails and rail banking consistent with the Trails Act. Moreover, because UP has consented to the substitution of Friends for IDPR as the new trail use negotiating party, that request will be granted as well. Finally, CCC's petition to reject IDPR's extension request will be denied on grounds that all required notice was effected and because the action taken here otherwise moots CCC's petition.

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

It is ordered:

⁵ Friends has submitted the requisite statement of willingness to assume financial responsibility for interim trail use/rail banking in compliance with 49 CFR 1152.29, and has acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service.

⁶ So long as abandonment has not been consummated and negotiations are continuing, the negotiating period may be extended beyond the initial 180 days provided in our rules. See Burlington Northern Railroad Company--Abandonment Exemption--In Franklin, Adams, Whitman, Lincoln, and Spokane Counties, WA (ICC Docket No. AB-6 (Sub-No. 295X) (ICC served Dec. 11, 1990).

1. CCC's petition to reject IDPR's extension request is denied.

2. The decision and notice of interim trail use served December 28, 1995, is modified to reflect the fact that Friends of the Weiser River Trail, Inc. is authorized to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company.⁷

⁷ Because both the railroad and the prospective trail user differ from the initial negotiating parties, we are issuing a new NITU here.

3. The negotiation period under the NITU is extended for 180 days from the service date of this decision.

4. This decision is effective on the service date.

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

Vernon A. Williams
Secretary