

29301  
DO

SERVICE DATE - JULY 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 117X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN LAKE COUNTY, CO

Decided: June 29, 1998

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 1.8-mile portion of the Leadville Branch from milepost 274.3 near McWethy Drive to the end of the line at milepost 276.1 at the rail yard near U.S. Highway 24, in Leadville, Lake County, CO. Notice of the exemption was served and published in the Federal Register on June 4, 1998 (63 FR 30561-62). The exemption is scheduled to become effective on July 4, 1998.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA), served June 18, 1998, indicating that the right-of-way may be suitable for other public use following abandonment in this proceeding. In the EA, SEA also indicates that the National Geodetic Survey (NGS) has identified 2 geodetic station markers that may be affected by the abandonment. NGS states that it must be notified 90 days in advance of any activities that would disturb or destroy these markers. Therefore, SEA recommends that a condition be imposed requiring UP to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

By petition filed May 28, 1998, Lake County Board of County Commissioners (Lake County) filed a request for issuance of a notice of interim trail use/rail banking (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, so that it could negotiate with UP for use of the line as a recreational trail.<sup>1</sup>

In the submission received on May 28, 1998, Lake County initially requested that UP be prohibited from disposing of the corridor, including tracks, ties and signal equipment along the right-of-way, except for public use on reasonable terms, and that UP be barred from removing or destroying any trail related structures, such as culverts for a 180-day period from the effective date of the abandonment exemption. Lake County states that it needs the full 180-day period to complete negotiations with UP. Lake County submitted a statement indicating its willingness to assume full financial responsibility for management of, for any legal liability arising out of the transfer or use of the right-of-way (unless user is immune from liability in which case it need only indemnify the

---

<sup>1</sup> The notice of exemption indicated that a NITU request would be addressed in a subsequent decision.

railroad against any potential liability), and for payment of taxes for, the right-of-way as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. Also on May, 28, 1998, UP indicated its willingness to negotiate with Lake County over trail use/rail banking of the line, but UP opposed imposition of a public use condition on the track structure and signal equipment on the right-of-way. In a supplemental reply received on June 9, 1998, Lake County requested that the track structure and signal equipment be excluded from the public use request.

Lake County's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate. Therefore, 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. 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 National Trails System Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d at 609. Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Lake County has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, Lake County must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations.

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 notice of exemption served and published in the Federal Register on June 4, 1998, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that UP shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; and (b) keep intact the right-of-way underlying the track, including culverts (but not track or track material or signal equipment) for a period of 180 days (until December 31, 1998), to enable any state or local government agency, or other interested person 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 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 December 31, 1998, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary