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SERVICE DATE – LATE RELEASE MAY 17, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 278X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN SAN JOAQUIN AND STANISLAUS COUNTIES, CAL.

Decided: May 16, 2011

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 5.18-mile line of railroad known as the McHenry Industrial Lead extending from milepost 21.25 near Escalon to milepost 26.43 near McHenry in San Joaquin and Stanislaus Counties, Cal. Notice of the exemption was served and published in the Federal Register on July 2, 2009 (74 Fed. Reg. 31,790). The exemption became effective on August 1, 2009. In this decision, the Board is granting the request by the City of Modesto, Cal. (the City), to extend the interim trail use/rail banking negotiation period.

By decision and notice of interim trail use or abandonment (NITU) served on July 31, 2009, the proceeding was reopened and a 180-day period was authorized for the City to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). By several decisions, the most recent served on November 12, 2010, the trail use negotiation period under the NITU was extended until April 23, 2011.

By letter filed on May 2, 2011, the City submitted a request for an additional 180-day extension of the NITU negotiating period. In support, the City states that the parties have not yet been able to reach an agreement and would like to continue negotiations. UP replied that it is willing to continue to negotiate for interim trail use/rail banking with the City and supports the City's request, but UP stated that it agrees to only a 90-day extension.

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

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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).

580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Because the Trails Act permits only voluntary interim trail use<sup>2</sup> and UP has agreed to only a 90-day extension, the Board can only extend the NITU negotiation period for 90 days, rather the 180 days requested by the City. Accordingly, the NITU negotiating period will be extended for an additional 90 days from April 23, 2011, to July 22, 2011.

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

It is ordered:

1. The City's request to extend the negotiation period is granted.
2. The negotiating period under the NITU is extended for 90 days, from April 23, 2011, to July 22, 2011.
3. This decision is effective on its service date.

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

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<sup>2</sup> See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).