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SERVICE DATE – LATE RELEASE DECEMBER 10, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 316X)

UNION PACIFIC RAILROAD COMPANY—ANDONMENT EXEMPTION—IN
FRANKLIN COUNTY, IOWA

Decided: December 10, 2013

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 0.59-mile line of railroad on its Bristow Subdivision from milepost 318.07 to milepost 318.66 near Hampton, in Franklin County, Iowa. Notice of the exemption was served and published in the Federal Register on November 8, 2013 (78 Fed. Reg. 67,217). The exemption is scheduled to become effective on December 11, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on November 15, 2013, recommending that one environmental condition be imposed on any decision granting abandonment authority. In the EA, OEA states that the Iowa Department of Natural Resources (IDNR), Conservation and Recreation Division (CRD), commented that it had conducted a search of its database for any rare species or significant natural communities that may be present within the area of the proposed abandonment and found no site specific records for such resources. According to OEA, IDNR has requested that it be notified if any such resources are encountered during UP's salvage activities to determine if further actions are warranted. OEA also states that IDNR noted that its comments do not include any permits that may be required from IDNR's Environmental Services Division (ESD) and cautioned that other department approvals may be required for the proposed abandonment. Therefore, OEA recommends that, prior to commencement of any salvage activities, UP be required to consult with IDNR CRD to ensure that any concerns in the right-of-way are addressed regarding disturbance to any rare species or significant natural communities. OEA also recommends that UP be required to consult with IDNR ESD to determine the permit requirements, if any, for watershed disturbances, erosion and sedimentation, or wastewater discharges.

OEA issued its final EA on December 6, 2013, noting that no comments to the EA were received by the November 29, 2013 due date and recommending that the previously recommended environmental condition be imposed. Accordingly, the condition recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On August 22, 2013, the Franklin County Conservation Board and the Iowa Natural Heritage Foundation (collectively, Commenter) jointly filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with UP for acquisition of the entire line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the Commenter has also submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on August 22, 2013, UP has indicated its willingness to negotiate with the Commenter for interim trail use but only for the 0.56-mile portion of the right-of-way between milepost 318.10 and milepost 318.66. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU for the portion of the right-of-way between milepost 318.10 and milepost 318.07.

Because the Commenter's request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued for the portion of the right-of-way between milepost 318.10 and milepost 318.66. The parties may negotiate an agreement for that portion of the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, UP may fully abandon the line upon expiration of the public use condition being imposed below. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Commenter also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the entire right-of-way. The Commenter asks that UP be prohibited from disposing of the corridor except for public use on reasonable terms. The Commenter's justification is that the corridor closes the last remaining gap in Franklin County's existing 11.5-mile Rolling Prairie Trail and would tie the developed trail into the community of Hampton and its various amenities. The Commenter asks that UP be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The Commenter's justification for its request is that these structures have considerable value for recreational trail purposes. The Commenter state that the 180-day period is needed to complete negotiations with UP.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 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. 49 C.F.R. § 1152.28(a)(2). Because the Commenter has satisfied these requirements, a 180-day public use condition will be imposed for the entire line, requiring UP to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor commencing from December 11, 2013, 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. Here, however, while both conditions will be imposed at this time, the public use condition will expire on June 9, 2014, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until June 8, 2014. If a trail use agreement is reached for a portion of the right-of-way prior to June 8, 2014, UP must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the Commenter, but may engage in negotiations with other interested persons.

As conditioned, this action 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 notice served and published in the Federal Register on November 8, 2013, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for the portion of the right-of-way between milepost 318.10 and milepost 318.66 as set forth below to permit the Commenter to negotiate with UP for trail use for that portion of the right-of-way, for a period of 180 days from the service date of this decision and notice, until June 8, 2014, and to permit public use negotiations for the entire line as set forth below, for a period of 180 days commencing from the December 11, 2013 effective date of the exemption until June 9, 2014. The abandonment is also subject to the condition that UP shall, prior to commencement of any salvage operations, (a) consult with IDNR CRD to ensure that any concerns in the right-of-way are addressed regarding disturbance to any rare species or significant natural communities, and (b) consult with IDNR

ESD to determine the permit requirements, if any, for watershed disturbances, erosion and sedimentation, or wastewater discharges.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, UP may discontinue service and salvage track and related materials. UP shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until June 9, 2014, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by June 8, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the line upon expiration of the public use condition imposed here.

9. This decision and notice is effective on its service date.

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