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SERVICE DATE – JANUARY 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 193X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN UTAH COUNTY, UT

Decided: January 13, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 2.83-mile portion of the Provo Industrial Lead from milepost 753.27 near Provo, to milepost 756.10 near Gatex, in Utah County, UT. Notice of the exemption was served on December 2, 2002, and published in the Federal Register on December 4, 2002 (67 FR 72270). The exemption was scheduled to become effective on January 1, 2003. However, on December 23, 2002, the Board's Section of Environmental Analysis (SEA) issued a new environmental assessment (EA) that corrected the description of the line given in an EA issued on December 6, 2002. Comments to the corrected EA were due on January 7, 2003. In light of the correction and the extension of the deadline for comments on the EA, by a decision served on December 24, 2002, the effective date of the exemption was extended to January 14, 2003.

SEA indicated in the EA that various government entities, including the Utah Department of Environmental Quality-Hazardous Waste Division (DEQ-HW), the U.S. Environmental Protection Agency - Region VIII (EPA), National Park Service, the Utah State Historical Society (SHPO) and the Utah County Commissioners (County), have not completed their review of the proposed abandonment. Accordingly, SEA recommends that UP be required: (1) to consult with DEQ-HW prior to abandonment to identify all potential hazardous waste sites located on the railroad right-of-way; (2) to consult with the SHPO and secure all necessary permits prior to initiation of salvage or disposal activities; and (3) to consult with the County prior to initiation of any salvage activities in order to address any of its concerns. In addition, the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified two geodetic survey markers that could be affected by the abandonment. Therefore, SEA recommends a condition requiring UP to provide NGS with 90 days' notice prior to initiation of any salvage operations that will disturb or destroy the two markers on the right-of-way.

Finally, SEA states that the U.S. Department of Interior, Fish and Wildlife Service (FWS) has expressed concern for the endangered June Sucker. Therefore, SEA recommends that, if UP should salvage the rail line rather than convey it to the Utah Transit Authority (UTA), a condition be placed on any decision granting abandonment authority prohibiting UP from salvaging or disposing of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

On December 12, 2002, UTA timely filed a request for the issuance of a notice of interim trail use (NITU) for the subject line under the National Trails Act , 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with UP for acquisition of the right-of-way for use as a trail. UTA submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer of 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 40 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. In a response submitted on December 23, 2002, UP indicated its willingness to negotiate with UTA.

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

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. The proceeding is reopened.
2. Upon reconsideration, the notice served on December 2, 2002, and published in the Federal Register on December 4, 2002, exempting the abandonment of the line described above is modified to the extent necessary to implement trail use/rail banking as set forth below, for a period of 180 days commencing from the January 14, 2003 effective date of the exemption (until July 13, 2003), and subject to the condition that UP shall: (1) provide NGS with 90 days' notice prior to initiation of any salvage operations that will disturb or destroy the two survey markers on the right-of-way; (2) consult with DEQ-HW prior to abandonment to identify all potential hazardous waste sites located on the railroad right-of-way; (3) consult with the SHPO and secure all necessary permits prior to initiation of salvage or disposal activities; (4) consult with the County prior to initiation of any salvage activities; and (5) be prohibited from salvaging or disposing of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.
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 July 13, 2003, 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 its date of service.

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

Vernon A. Williams
Secretary