

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 248X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN POLK
COUNTY, IOWA

Decided: January 11, 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 portion of its line of railroad known as the Bondurant Industrial Lead, extending from milepost 225.56 near Berwick to milepost 232.80 near Bondurant, a distance of 7.24 miles, in Polk County, Iowa. On February 18, 2010, notice of the exemption was served and published in the Federal Register (75 Fed. Reg. 7,302-03).¹ By decision and notice of interim trail use or abandonment (NITU) served on March 19, 2010 (March 2010 decision), the proceeding was reopened and a 180-day period was authorized for the Iowa Natural Heritage Foundation, in conjunction with Polk County Conservation Board, the City of Bondurant, and the Iowa Trails Council (collectively, INHF), 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).² The trail use negotiating period under the NITU expired on September 15, 2010.

On September 15, 2010, INHF submitted a motion to extend the NITU negotiating period for the right-of-way in this proceeding until March 15, 2011.³ INHF states that additional time is needed to complete interim trail use negotiations. In a response filed on October 5, 2010, UP states that it is willing to continue negotiating with INHF for the requested 180 days, but only for that portion of the line between milepost 226.38, near Berwick, to milepost 232.52, near Bondurant because, in the same filing, UP advised the Board, pursuant to 49 C.F.R. § 1152.29(e)(2), that it is consummating the abandonment for portions of the line extending from

¹ The exemption became effective on March 20, 2010.

² The March 2010 decision also imposed a public use condition, a Section 106 historic preservation condition, and 2 environmental conditions. The public use condition expired on September 16, 2010, and by statute cannot be extended. The historic preservation condition was removed by decision served on August 24, 2010. The 2 environmental conditions remain in effect, but are not barriers to UP's consummation of the abandonment of the line.

³ INHF calculated the 180-day extension of the NITU negotiating period as ending on March 15, 2011. UP, in its agreement to continue to negotiate the NITU, requests the negotiation period be extended through March 14, 2011 (the 180th day).

milepost 225.56 to milepost 226.38 and milepost 232.52 to milepost 232.80.⁴ By reply filed on December 2, 2010, INHF states it is willing to continue negotiations for the remaining portion of the right-of-way.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.⁵ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for only that portion of the line between milepost 226.38, near Berwick, to milepost 232.52, near Bondurant, for an additional 180 days, from September 15, 2010, to March 14, 2011. The NITU for the rest of the line is vacated. See 49 C.F.R. § 1152.29(d)(2).

This decision 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. The NITU served on March 19, 2010, is modified, and the NITU for the segments of the right-of-way from milepost 225.56 to milepost 226.38 and milepost 232.52 to milepost 232.80 is vacated.
3. INHF's request to extend the NITU negotiating period is granted.
4. The negotiating period under the NITU is extended for the portion of the right-of-way between milepost 226.38 to milepost 232.52 for 180 days, until March 14, 2011.
5. This decision is effective on its service date.

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

⁴ UP also advises that the portion of the line from milepost 232.52 to milepost 232.80 is not owned by UP, but is subject to a track easement with a local grain elevator operator.

⁵ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).