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SERVICE DATE – FEBRUARY 4, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 200X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN FRANKLIN AND BUTLER COUNTIES, IA

Decided: February 4, 2008

On September 26, 2003, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the Iowa Trails Council (Council), on behalf of the Franklin and Butler Counties Conservation Boards, to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for a 23.61-mile line of railroad, known as the eastern portion of the Bristow Subdivision, extending from milepost 318.36 near Hampton to milepost 294.75 near Allison, in Franklin and Butler Counties, IA. The negotiating period under the NITU was extended by decisions served on March 24, 2004, September 17, 2004, March 24, 2005, September 14, 2005, April 13, 2006, October 16, 2006, March 30, 2007, September 6, 2007, and November 5, 2007. The latest extension expired on January 4, 2008.

On January 2, 2008, the Council filed a request to extend the NITU negotiating period for an additional 180 days. The Council states that additional time is needed to continue negotiations. In a letter dated January 9, 2008, UP states that it is willing to continue negotiating with the Council, but consents to only a 120-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. Under the circumstances, an extension of the negotiating period is warranted. *See Birt v. STB*, 90 F.3d 580, 588-90 (D.C. Cir. 1996); *Grantwood Village v. Missouri Pac. R.R. Co.*, 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 National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ However, because the Trails Act permits only voluntary interim trail use,² and UP has consented to only a 120-day extension, the Board can only extend the NITU negotiation period for 120 days, rather than the 180 days requested by the Council. Accordingly, the NITU negotiating period will be extended for an additional 120 days from January 4, 2008. Given the time that has elapsed since abandonment was authorized, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

¹ *See Rail Abandonments—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987).

² *See Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986).

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

It is ordered:

1. The request of the Council to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended for 120 days, until May 3, 2008.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary