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SERVICE DATE - NOVEMBER 5, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 126X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN JEFFERSON COUNTY, WI

Decided: November 2, 1998

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon and discontinue service over a 2.0-mile line of railroad on the Clyman Branch from the end of the line at milepost 110.0 to milepost 112.0 near Fort Atkinson, in Jefferson County, WI. Notice of the exemption was served and published in the Federal Register on October 8, 1998 (63 FR 54186-87). The exemption is scheduled to become effective on November 7, 1998.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 13, 1998. In the EA, SEA states that the U.S. Army Corps of Engineers (Corps) has indicated that the abandonment of the line may be subject to review and permitting authority. It requests that UP contact the Corps when salvage and abandonment plans are completed to determine whether any Corps permits are required. Therefore, SEA recommends that a condition be imposed requiring UP, prior to engaging in any salvage activities, to contact the Corps' Waukesha office to determine if permits are necessary.

SEA also states that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the abandonment. NGS requests that it be notified 90 days in advance of any activities that would disturb or destroy these markers. Therefore, SEA recommends that a condition be imposed requiring UP to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

By petition filed October 13, 1998, the State of Wisconsin Department of Transportation timely filed a request for the issuance of a notice of interim trail use (NITU) for the City of Fort Atkinson (City) to negotiate with UP to acquire and use the entire right-of-way for interim highway, bicycle, pedestrian and other trail purposes and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The City submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way

for trail purposes is subject to future reactivation for rail service. By letter filed October 15, 1998, UP indicated its willingness to negotiate with the City for interim trail use.

The City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate. Therefore 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.

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. Upon reconsideration, the notice of exemption published in the Federal Register on October 8, 1998, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing November 7, 1998, the effective date of the exemption until (May 7, 1999), and subject to the conditions that UP shall: (a) prior to engaging in any salvage activities contact the Corps' Waukesha office to determine if permits are necessary; and (b) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.
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 obligation 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 May 7, 1999, 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 on its service date.

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

Vernon A. Williams
Secretary