

41711
DO

SERVICE DATE – JULY 21, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 298X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN FREEBORN COUNTY, MINN.

Decided: July 20, 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 line of railroad, known as the Hartland Subdivision, from milepost 119.65 at Curtis, to the point of connection with the Albert Lea Subdivision, and to the end of UP ownership at milepost 107.0 near Hartland, a distance of 12.65 miles, in Freeborn County, Minn. Notice of the exemption was served and published in the Federal Register on June 22, 2011 (76 Fed. Reg. 36,617). The exemption is scheduled to become effective on July 22, 2011.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on June 27, 2011. In the EA, OEA states that the National Geodetic Survey (NGS) has identified 21 geodetic station markers in the area of the proposed abandonment. Therefore, OEA recommends a condition requiring UP to consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database (Database) at <http://home.nps.gov/nacd/> to identify federally recognized tribes that may have ancestral connections to the project area. According to OEA, the database indicated that there are 7 tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment. The tribes are: the Flandreau Santee Sioux; the Lower Sioux Indian Community Council; the Prairie Island Indian Community; the Santee Sioux Nation; the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; the Spirit Lake Tribal Council; and the Upper Sioux Community of Minnesota. OEA sent a copy of the EA to these tribes for review and comment.

Comments to the EA were due by July 13, 2011. No comments were received. Accordingly, the condition recommended by OEA in the EA will be imposed.

In the EA, OEA states that the right-of-way might be suitable for other public use following abandonment and salvage of the line. On June 22, 2011, the County of Freeborn, Minn. (the County), filed a request for a public use condition under 49 U.S.C. § 10905 and a request for the issuance of a notice of interim trail use (NITU) for the entire line proposed for

abandonment under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29, to negotiate with UP for acquisition of the right-of-way for use as a recreational trail. The County indicates that the corridor would offer access to a city park, alternative transportation options, and scenic settings, and that the corridor would connect with multiple trail systems offering a unique trail opportunity for the region.

The County has submitted a statement of willingness to assume full financial responsibility for the 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, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet the responsibilities described above and to future reconstruction and reactivation of the right-of-way for rail service. In a response filed on June 23, 2011, UP states that it is willing to negotiate with the County for interim trail use and that it supports the County's request to negotiate for a period of 180 days.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29, and UP is willing to negotiate with the County for trail use, a NITU will be issued to the County. 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, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

As noted above, the County also requests a 180-day public use condition for the entire line proposed for abandonment. The County requests that UP be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. The County also requests 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 exemption, because the structures have considerable value for recreational trail purposes. The County states 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. See 49 C.F.R. § 1152.28(a)(2). Because the County has satisfied these requirements, a 180-day public use condition will be imposed, requiring UP to keep intact the right-of-way (including bridges, trestle, culverts and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the July 22, 2011 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 January 18, 2012, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until January 17, 2012). If a trail use agreement is reached on a portion of the right-of-way prior to January 18, 2012, UP must keep the remaining right-of-way intact for the remainder of the 180-day 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 County, but may engage in negotiations with other interested persons.

As conditioned, this decision and notice 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 June 22, 2011, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit the County to negotiate with UP for trail use for a period of 180 days from the service date of this decision and notice (until January 17, 2012); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the July 22, 2011 effective date of the exemption (until January 18, 2012). It is also subject to the condition that UP consult with the NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, UP may discontinue service over the line. UP shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, and shall refrain from disposing of the corridor (other than tracks, ties, and signal equipment), for a period of 180 days 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 period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the line.

4. 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.

5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by January 17, 2012, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, after the conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its service date.

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