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SERVICE DATE - MAY 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 155X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MARSHALL, WASHINGTON, AND CLOUD COUNTIES, KS

Decided: May 16, 2001

By decision served December 13, 2000, the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit Kyle Railroad Company (Kyle) to discontinue service over, and Union Pacific Railroad Company (UP) to abandon, a 60.12-mile line of railroad known as the Frankfort Branch, extending from milepost 409.1 near Frankfort to milepost 472.0 at Ames, in Marshall, Washington, and Cloud Counties, KS.¹ The abandonment was made subject to standard employee protective conditions and the following historic and environmental conditions: (1) petitioners shall retain their interest in and take no steps to alter the historic integrity of the bridge located at milepost 471.4 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) petitioners shall, prior to abandonment/discontinuance and salvage, consult with the Kansas Department of Health and Environment (Kansas DH&E) to develop a Nonpoint Source Pollution Control Plan and to determine if a water quality certification is required; (3) petitioners shall not salvage or dispose of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; and (4) petitioners shall consult with the U.S. Army Corps of Engineers (Corps) prior to abandonment and salvage of the right-of-way to determine if the proposed project is consistent with applicable Federal, state, and local water quality standards, and if permits are required under section 404 of the Clean Water Act.

By letter filed April 13, 2001, UP requested that environmental conditions (2) and (3) be removed. In support, petitioner attached comments from the U.S. Fish and Wildlife Service (FWS) stating that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Petitioner also attached comments from the Kansas DH&E indicating that the pollution control plans that UP has provided are acceptable and that a water quality certification will not be required for the line.

¹ The December 13, 2000 decision embraced both the present proceeding and STB Docket No. AB-486 (Sub. No. 3X), Kyle Railroad Company—Discontinuance Exemption—In Marshall, Washington, and Cloud Counties, KS. By letter dated January 22, 2001, Kyle notified the Board that it had exercised the discontinuance authority and ceased operations on the Frankfort Branch.

By letter filed April 23, 2001, UP also requested the removal of environmental condition (4). In support, petitioner attached comments from the Corps indicating that a permit would be required only if there was discharge of dredged or fill material into any waters of the United States, including wetlands. Petitioner stated that it does not expect any such discharge.

Based on the comments from the FWS, Kansas DH&E, and the Corps, the Board's Section of Environmental Analysis recommends that environmental conditions (2), (3) and (4) be removed. The recommendation will be adopted. Accordingly, the proceeding will be reopened and those three previously imposed conditions will be removed. The historic condition imposed in the December 13, 2000 decision will remain in effect.

This action 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, environmental conditions (2), (3) and (4) imposed in the December 13, 2000 decision are removed.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary