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SERVICE DATE - NOVEMBER 27, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 95X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
MADDENS-EMMETT LINE IN CANYON AND GEM COUNTIES, ID

STB Docket No. AB-433 (Sub-No. 3X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--  
DISCONTINUANCE SERVICE EXEMPTION--MADDENS-EMMETT  
LINE IN CANYON AND GEM COUNTIES, ID

Decided: November 15, 1996

On September 11, 1996, Carol Stocking (petitioner) filed a petition for administrative review of a decision served August 29, 1996,<sup>1</sup> by the Acting Director of the Office of Proceedings, granting the joint request of the City of Middleton, ID (City), and the Middleton-Emmett Trail Association (META), collectively, and the Emmett to Middleton Trail Society (EMTS), to extend the trail use negotiating period to January 14, 1997.<sup>2</sup> On September 21, 1996, UPRR filed a reply to the petition. The petition will be denied.

BACKGROUND

By decision served and notice published in the Federal Register (61 FR 3081) on January 30, 1996, Union Pacific Railroad Company (UPRR) and Idaho Northern & Pacific Railroad Company (INPR) were granted an exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for UPRR to abandon, and for INPR to discontinue service over, 17.5 miles of rail line (a portion of the Idaho Northern Branch) between milepost 7.0 at or near Maddens and milepost 24.5 at or near Emmett, in Canyon and Gem Counties, ID.

By decision and notice of interim trail use or abandonment (NITU) served on February 29, 1996, the Board authorized the City and META, collectively, and EMTS to negotiate an interim trail use/rail banking agreement with UPRR.<sup>3</sup> The NITU gave the parties 180 days in which to negotiate an interim trail use agreement. During that period, the railroad may discontinue service, cancel the tariffs (if any), and salvage the track and other equipment. 49 CFR 1152.29(d)(1). If no trail arrangement is negotiated, the NITU automatically converts into effective authority to fully abandon the line. On the other hand, if a trail use agreement is reached, it is automatically authorized by the NITU.

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<sup>1</sup> Petitioner states that she is the representative for sixty property owners adjacent to the rail corridor. Petitioner filed a protest in opposition to the extension of the NITU on September 4, 1996. The Board did not receive the protest in time to consider it in the prior decision.

<sup>2</sup> The negotiation period expired on August 27, 1996.

<sup>3</sup> The trail use condition pertains only to STB Docket No. AB-33 (Sub-No. 95X).

Citing Hayfield Northern R. Co. v. Chicago and N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (Hayfield Northern), petitioner maintains that the Board could not extend the 180-day negotiation period in this proceeding. Petitioner alleges that UPRR abandoned the rail corridor on or about April 1, 1996, when it or its contractor commenced removing the rails and ties from the line. Citing Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990), petitioner further notes that the Board's rules at 49 CFR 1152.29 provide a 180-day period for negotiating interim trail use agreements and that neither the statute nor the rules under the National Trails System Act (Trails Act) specifically allow for extensions.

By reply filed September 21, 1996, UPRR states that there has been no full abandonment of the right-of-way. UPRR points out that its agreement to the trail condition and then to the requested extension of that condition shows that there was no intent to fully abandon the line. The railroad adds that in Birt v. STB, 90 F.3d 580 (D.C. Cir. 1996) (Birt), petition for reh'g pending, the court recently found that the Board could extend the Trails Act negotiation period in circumstances that were similar to those at issue in this case.

#### DISCUSSION AND CONCLUSIONS

The Board's jurisdiction over a line does not end until a line is fully abandoned. Hayfield Northern. A railroad must take action to exercise abandonment authority. Moreover, the Board does not lose jurisdiction unless the railroad's action is to fully abandon the line, as opposed to exercising the lesser included authority to discontinue service over the line.

The facts here indicate that UPRR had no intent to fully abandon the line. The parties' expressed desire and intention to continue trail use negotiations beyond 180 days, and the railroad's joining in the requests for more time, show that there was no intent to fully abandon. Thus, we retain jurisdiction over the property.

Petitioner would have us focus on the fact that UPRR discontinued service and removed rail and ties (beginning around April 1, 1996, after the NITU has been imposed). These steps are often taken together in connection with abandonment. But as the court in Birt noted, 90 F.3d at 585-86, they also are fully consistent with the lesser action of temporary cessation of rail operations or trail use. See 49 CFR 1152.29(d)(1). Thus, they are entitled to little weight where, as here, UPRR's actions demonstrated its intent not to abandon by joining in the requests for more time to negotiate.

Under these circumstances, the trail use negotiating period was properly extended. See Birt; Grantwood Village v. Missouri Pacific Railroad, 95 F.3d 654 (8th Cir. 1996). Accordingly, we will deny the petition for administrative review.

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

#### It is ordered:

1. The petition for administrative review is denied.

2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Simmons, and  
Commissioner Owen.

Vernon A. Williams  
Secretary