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Service Date - December 13, 1996

SURFACE TRANSPORTATION BOARD'

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-33 (Sub-No. 93X)2

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--WHITTIER JUNCTION-COLIMA JUNCTION
LINE IN LOS ANGELES COUNTY, CA

Decided: December 9, 1996

Union Pacific Railroad Company (UPRR) filed a notice of exemption under 49 CFR part 1152 Subpart F--Exempt Abandonments and Discontinuances to abandon approximately 5.18 miles of the Whittier Junction-Colima Junction line (portion of the Anaheim Branch) from milepost 0.0 near Whittier Junction to milepost 5.18 near Colima Junction, in Los Angeles County, CA. Notice of the exemption was served and published in the Federal Register on August 12, 1996 (61 FR 41832). The exemption became effective on September 11, 1996.

By petition filed November 19, 1996, City of Whittier (City), filed a request for issuance of: (1) a 180-day public use condition so that it could negotiate with UPRR for use of the line as a bicycle and pedestrian trail;' and (2) a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d).

The City requests that UPRR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, along the right-of-way, except for public use on reasonable terms, and that UPRR be barred from removing or destroying any trail-related structures, such as bridges, culverts, etc., for a 180-day period from the effective date of the abandonment exemption. The City states that it needs the full 180-day period allowed to coordinate the efforts with local interest groups and to commence negotiations with UPRR. It also has submitted a

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, and effective on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This proceeding was pending with the ICC prior to January 1, 1996, and relates to functions retained under Board jurisdiction pursuant to new 49 U.S.C. 10903. Citations are to the former sections of the statute, unless otherwise indicated.

² This proceeding is related to Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transported Company St. Louis Southwestern Railway Company SPCSL Corr), and The Denver and Rio Grande Western Railroad Company (UP/SP)

³ The August 12 decision also provided that requests for trail use/rail banking had to be filed by August 22, 1996. The decision stated, however, that the Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

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statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledges that the use of the right-of-way for trail purposes is subject to possible future construction and reactivation of the right-of-way for rail service. By letter filed November 19, 1996, UPRR indicates its willingness to negotiate with the City for interim trail use.

Inasmuch as UPRR has not consummated the abandonment and has indicated a willingness to negotiate, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the negotiation period established in this decision. Here, while the negotiation period for interim trail use/rail banking could run for 180 days from the service date of this decision, we will provide for it to run concurrently with the public use condition, which will expire on March 10, 1997.

The City's submission meets the requirements for a public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying :
(a) the condition sought; (b) the public importance of the condition c) the period of time for which the condition would be effective; and
: (d) justification for the imposition of the period of time requested.

The parties may negotiate an agreement for trail use or public use until March 10, 1997. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached by that date, UPRR 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. The law does not permit extension of the public use condition beyond March 10, 1997. Extensions may be sought for the trail use negotiation period beyond March 10, 1997.

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.10906, Rail Abandonments - Use of Rights-of-way as Trails 2 I.C.C.2d 591 (1986).

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

It is ordered

1. This proceeding is reopened

2. Upon reconsideration the decision served and notice published in the Federal Register on August 12, 1996, is modified to the extent necessary to implement interim trail use/rail banking, as set forth below, and is subject to the conditions that UPRR shall:
(a) keep intact the right-of-way underlying the track, including bridges, culverts, etc., for a period of 180 days from the September 11, 1996 effective date of the abandonment exemption (until March 10, 1997), to enable any State or local government agency, or other interested persons, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

3. Subject to the conditions imposed in the decision served August 12, 1996, UPRR may discontinue service, and salvage track and related materials consistent with interim trail use/rail banking.

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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 the future restoration of rail service 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 specific date.

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7. If an agreement for interim trail use/rail banking is reached by March 10, 1997, interim trail use may be implemented.

8. If no agreement is reached by the March 10, 1997 expiration of the public use condition, UPRR may fully abandon the line, provided the conditions imposed in the decision served August 12, 1996, are met.

9. This decision is effective on the service date.

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

Vernon A. Williams
Secretary