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SERVICE DATE - MAY 15, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 145X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN STANISLAUS COUNTY, CA

Decided: May 12, 2000

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 a 5.62-mile line of railroad over the Tidewater Subdivision from milepost 26.43 near McHenry to milepost 32.05 in Modesto, in Stanislaus County, CA. Notice of the exemption was served and published in the Federal Register on April 14, 2000 (65 FR 20263-64). The exemption is scheduled to become effective on May 16, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 21, 2000. In the EA, SEA states that the National Geodetic Survey (NGS) has identified eight geodetic station makers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these makers to plan for their relocation. 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.

SEA also states that the California Department of Toxic Substances Control (DTSC or Department) requests that UP be required to prepare a Preliminary Endangerment Assessment (PEA), which will assist the Department in determining whether hazardous substances that pose a threat to human health or the environment exist at the site. Therefore, SEA recommends that UP be required to consult with DTSC and comply with the Department's request to complete a PEA covering the right-of-way prior to commencement of salvage operations.

Additionally, based on comments on the EA, SEA has advised the Board that the Resources Board of the State of California (RBC) indicates that the proposed abandonment is within or adjacent to the Tuolumne River and Dry Creek Designated Floodways. RBC states that, if salvage activities, including excavation and construction are proposed within the designated floodways, a permit will be required pursuant to section 8710 of the California Water Code, and that any proposed projects should comply with the standards contained in the California Code of Regulations, Title 23. RBC also states that section 7 of the California Code of Regulations provides that additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological and environmental surveys, and other analyses may be required. Therefore, SEA recommends that, UP be required to consult with RBC, prior to conducting salvage operations, to determine if permits are required under California statutes.

By petition filed April 4, 2000, the City of Modesto (City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with UP for a portion of the right-of-way between milepost ± 26.43 (a point 30 feet north of the north line of the proposed Pelandale Expressway) and milepost ± 30.63 (at Needham Street), a distance of 4.2 miles. The City submitted a statement indicating its 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 payment of and all taxes that may be levied or assessed against, 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.¹ By letter filed April 28, 2000, UP advised the Board that it is willing to negotiate with the City for interim trail use for the 4.2-mile portion of the right-of-way.

Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into negotiations for a portion of the line, a NITU will be issued for that portion. 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, provided that the environmental conditions imposed in this decision are met. See 49 CFR 1152.29 (d)(2). 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 April 14, 2000, 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 the portion of the right-of-way between milepost ± 26.43 (a point 30 feet north of the north line of the proposed Pelandale Expressway) and milepost ± 30.63 (at Needham Street) for a period of 180 days commencing May 15, 2000, the effective date of the exemption (until November 12, 2000), and subject to the conditions that UP shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; (b) consult with the DTSC and comply with the Department's request to complete a PEA covering the line prior to commencing salvage operations;

¹ The notice of exemption indicated that the NITU would be addressed in a subsequent decision.

(c) consult with the RBC prior to conducting salvage operations to determine if permits are required under California statutes.

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 obligations for the right-of-way.

5. If interim trail use is implemented, and the user subsequently 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 November 12, 2000, 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.

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

Vernon A. Williams
Secretary