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SERVICE DATE – MAY 26, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 213X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–  
IN DALLAS COUNTY, IA

Decided: May 25, 2005

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2004, the Board granted Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Perry Subdivision, extending from milepost 296.8 near Waukee, IA, to milepost 275.9 (Equation milepost 275.9 = 361.8) near Perry, IA, and from milepost 361.8 to milepost 369.0 near Dawson, IA, a total distance of 28.1 miles, in Dallas County IA. The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for the Dallas County Conservation Board and the Iowa Natural Heritage Foundation (collectively, INHF), to negotiate an interim trail use/rail banking agreement with UP. The trail use negotiating period expired on April 23, 2005.

On May 23, 2005, INHF filed a request to extend the NITU negotiating period until October 22, 2005.<sup>1</sup> INHF states that the additional time is needed to complete negotiations and obtain grant funds for acquisition. UP states in a letter that it is willing to continue to negotiate with INHF and supports the requested extension.

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<sup>1</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. Se, e.g., Southern Pacific Transportation Company–Abandonment Exemption–In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until October 22, 2005.

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

It is ordered:

1. INHF's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until October 22, 2005.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary