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SERVICE DATE - DECEMBER 14, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 93X)¹

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

Decided: December 12, 2001

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152.50 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 41823). On December 13, 1996, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the City of Whittier (City) to negotiate an interim trail use/rail banking agreement with UP for the 5.18-mile line of railroad. The negotiation period under the NITU was extended several times at the request of UP and expired on December 31, 2000.²

By petition filed November 30, 2001, the City late-filed a request for a NITU for a portion of the right-of-way between milepost 0.43 near the grade crossing at Pioneer Boulevard and milepost 5.11 near Colima Junction, a distance of approximately 4.68 miles.³ The City states that, intermittently over the period of time since the effective date of the exemption, the City and UP have negotiated for transfer of the line, but the parties had a material disagreement regarding

¹ 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 Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP). The common control authorized in UP/SP, Decision No. 44 (STB served Aug. 12, 1996), was consummated on September 11, 1996.

² The negotiating period under the NITU was extended by decisions served February 10, 1997, January 26, 1998, August 5, 1998, July 30, 1999 (affirmed by decision served August 4, 1999), January 26, 2000, and August 7, 2000.

³ The August 12, 1996 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.

the value of the line, and the City's environmental assessment took longer to commence and to complete than the City had planned. The City further states that the parties have reached an agreement and completed all steps necessary for the planned transfer of the line. 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 any 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 as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. On December 5, 2001, UP advised the Board that it has not consummated the abandonment of the 4.68-mile portion of the line and that it is willing to negotiate with the City for interim trail use.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way⁴ and the carrier is willing to enter into negotiations. Inasmuch as UP has not consummated the abandonment and is willing to negotiate with the City for the right-of-way, a NITU will be issued for that portion, with the trail use negotiation period running for 180 days from the service date of this decision or until June 12, 2002. 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 the August 12, 1996 decision are met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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 August 12, 1996, 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 line extending between milepost 0.43 and milepost 5.11 until June 12, 2002, subject to the environmental conditions imposed in the August 12, 1996 decision.

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

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 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 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 specified date.
6. If an agreement for interim trail use/rail banking is reached by June 12, 2002, 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