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SERVICE DATE - APRIL 14, 2000

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

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

Union Pacific Railroad Company--Abandonment Exemption--in Stanislaus County, CA

Union Pacific Railroad Company (UP) has 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.<sup>1</sup> The line traverses United States Postal Service Zip Codes 95350 through 95356.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line;<sup>2</sup> (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf

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<sup>1</sup> UP states that it had authority to abandon the line between mileposts 27 and 30 pursuant to a joint relocation project with the Southern Pacific Transportation Company that was the subject of a notice of exemption in Union Pacific Railroad Company and Southern Pacific Transportation Company--Joint Relocation Project Exemption, Finance Docket No. 32086 (ICC served June 30, 1992), but that the abandonment authority was never exercised.

The City of Modesto (City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way between milepost +26.43 and milepost +30.63 pursuant to section 8 (d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's trail use request and any others that may be filed in a subsequent decision.

<sup>2</sup> UP states that in connection with track construction in downtown Modesto, it plans to temporarily detour some overhead traffic over the line for approximately one week beginning on or about April 14, 2000. UP states that the detour is necessary to maintain access to the Modesto & Empire Traction line between Modesto and Empire, CA.

of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 24, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May

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<sup>3</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>4</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

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4, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 19, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by April 14, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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Decided: April 7, 2000.

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

Vernon A. Williams

Secretary