

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-33 (Sub-No. 94X)²

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--MAGNOLIA TOWER-MELROSE LINE IN
ALAMEDA COUNTY, CA

Decided: January 14, 1997

Union Pacific Railroad Company (UPRR) filed a notice of exemption under 49 CFR part 1152 Subpart F--Exempt Abandonments and Discontinuances to abandon approximately 4.9 miles of the Magnolia Tower-Melrose line (portion of the Canyon Subdivision) from milepost 5.8 near Magnolia Tower to milepost 10.7 near Melrose, in Alameda County, CA. Notice of the exemption was served and published in the Federal Register on August 12, 1996 (61 FR 41827-28). A 180-day public use condition was imposed under 49 U.S.C. 10906 at the request of San Francisco Bay Trail (San Francisco) for a portion of the line from milepost 7.6 to milepost 7.1. The condition required that UPRR keep the right-of-way intact, including bridges, culverts, and similar structures, for a period of 180 days after the September 11, 1996 effective date of the exemption to permit San Francisco and any other state or local government agency, or other interested person, to negotiate for acquisition of the line for public use. The 180-day period will expire on March 10, 1997.

By petition filed May 23, 1996, City of Oakland (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;³ and (2) a notice of

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 Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP).

³ The City's request for a public use condition is moot, because a public use condition has already been imposed in the decision served August 12, 1996, for 180 days commencing from UPRR's discontinuance exemption's effective date of September 11,

interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The portion the City seeks also extends from milepost 7.6 and milepost 7.1.⁴ The City submitted a statement indicating its willingness to assume fully responsibility for management, and liability and payment of taxes, for, the right-of-way, as required at 49 CFR 1152.29 and acknowledged that use of the right-of-way as a trail is subject to future reactivation for rail service.

Inasmuch as UPRR has not consummated the abandonment and is willing to negotiate with the City for the right-of-way between milepost 7.6 and milepost 7.1, a NITU will issued under 49 CFR 1152.29 for that portion of the line. The parties may negotiate an agreement during the negotiation period established in this decision. Here, the negotiation period for interim trail use/rail banking will run for 180 days from the service date of this decision. The public use condition, which is scheduled to expire on March 10, 1997, may not be extended.

The parties may negotiate an agreement for trail use until July 21, 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.

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. 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 for that portion of the line extending from milepost 7.6 and milepost 7.1. If an interim trail use/rail banking agreement is executed before March 10, 1997, 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 on August 12, 1996, UPRR may discontinue service, and salvage track and related materials consistent with previously imposed conditions and consistent with interim trail use/rail banking after the effective date of this decision and notice.

1996. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

⁴ Through oversight, the Board did not include the City's request for imposition of an interim trail use condition in its prior decision. However, on January 8, 1997, UPRR filed a letter reiterating its willingness to negotiate for interim trail use and requesting that the Board impose an appropriate interim trail use condition.

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.

7. If an agreement for interim trail use/rail banking is reached by July 21, 1997, interim trail use may be implemented. If no agreement is reached by that date, UPRR may fully abandon the line, provided the conditions imposed in the decision served August 12, 1996, are met.

8. This decision is effective on the service date.

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

Vernon A. Williams
Secretary