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Office of Proceedings

Public Record

June 15, 2005



214204

Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 713
Washington, D.C. 20036

Re: Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X)

Dear Mr. Williams:

Enclosed please find an original and ten copies of a Joint Motion of Rails to Trails Conservancy and Bowie County, Texas for Substitution of New Railbanker/Interim Trail Manager regarding the above-referenced docket, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d), along with a Statement of Willingness filed on behalf of Bowie County. A check for the \$300 user fee is enclosed.

If you have any questions or need any additional information, please do not hesitate to contact me, at (202) 974-5142.

Very truly yours,

Andrea C. Ferster, General Counsel
Rails-to-Trails Conservancy

Enc.

cc: Robert Opal, UP-SF

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BEFORE THE SURFACE TRANSPORTATION BOARD



Missouri Pacific Railroad Company)
-- Abandonment Exemption --) Docket No. AB-3 (Sub-No. 137X)
in Red River and Bowie Counties, TX)
_____)

Joint Motion of Rails to Trails Conservancy and Bowie County, Texas,
for Substitution of New Railbanker/Interim Trail Manager

Pursuant to 49 C.F.R. § 1152.29(f), the Rails-to-Trails Conservancy ("RTC") and Bowie County, Texas, submit this joint motion to the Surface Transportation Board ("STB") requesting that Bowie County be substituted as the interim trail manager for the rail line in the above-captioned proceeding. This motion has the consent of Union Pacific Railroad Corporation ("UP") (See Letter attached as Exhibit A).

By decision served February 14, 1997, the Rails to Trails Conservancy (RTC) was recognized as the negotiating party, under the National Trails System Act, 16 U.S.C. § 1247(d) to negotiate with UP for the use of the subject right-of-way, which extends from M.P. 23 at New Boston in Bowie County, Texas, to the end of the track at milepost 61.5 near Clarksville, in Red River County, Texas, a distance of approximately 38.5 miles, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) (Trails Act).¹ A copy of this Notice of Interim Trail Use ("NITU") is attached as Exhibit B. UP notified the STB that the corridor was transferred to RTC pursuant to this NITU by letter dated July 7, 1997, a copy of which is attached as Exhibit C .

RTC and Bowie County have now entered into an agreement to transfer to Bowie County ownership of and management responsibility for a portion of the above rail line within Bowie

¹ See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

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County, and more specifically, from M.P. 23.00 (Engineering Station 1214 + 40) at New Boston, in Bowie County, TX to M.P. 42.59, at the Red River County line, a distance of approximately 19.59 miles, including all bridges and ballast, under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). Bowie County is a political subdivision organized under the laws of Texas. Under its agreement with RTC, Bowie County agreed to use the corridor “for public, trail and recreation uses, consistent with the National Trails System Act, as amended, 16 U.S.C. section 1247(d), the Trail Use Certificate imposed by the Surface Transportation Board (“STB”)” in STB Docket No AB-3 (Sub No. 137X), and subject to the Trail Use Conditions imposed by the STB , and applicable STB regulations.”

Bowie County has further agreed “to undertake all obligations presently assumed by RTC in its capacity as a ‘trail manager’ within the meaning of the National Trails System Act, the Trail Use Certificate, and applicable STB regulations.” A copy of Bowie County’s “statement of willingness” to serve as interim trail manager is attached as Exhibit D, accompanied by a check for \$300. Accordingly, RTC now wishes to terminate its trail use of this corridor, and Bowie County wishes to substitute for RTC as the interim trail use manager, and the parties jointly request the issuance of an appropriate order by this Board substituting Bowie County for RTC as interim trail manager for the line.

Since the issuance of the NITU, RTC at all points has maintained the line in question intact for interim trail use, and, apart from the contract to Bowie County, has not sold, or offered for sale, any parcels of land that would interfere with interim trail use and railbanking of the portion of the corridor that is covered by the NITU. Accordingly, the Board retains jurisdiction to substitute Bowie County, Texas for RTC as interim trail manager of this portion of the line.

CONCLUSION

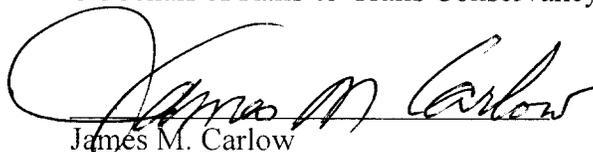
RTC and Bowie County jointly request that STB: (1) reopen the proceeding in AB-3 (Sub-No. 137X); (2) vacate the existing order that recognizes RTC as the interim trail manager for the line; and (3) issue a replacement order stating that Bowie County is now the railbanker/interim trail manager for the portion of the line from M.P. 23.00 (Engineering Station 1214 + 40) at New Boston, in Bowie County, TX to M.P. 42.59, at the Red River County line. Bowie County and RTC also request that the replacement order naming Bowie County as the substitute interim trail manager be effective as of date the new order is issued.

Respectfully submitted,



Andrea C. Ferster
General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W., 10th Fl.
Washington, D.C. 20036
(202) 974-5142

On behalf of Rails-to-Trails Conservancy



James M. Carlow
Bowie County Judge
P.O. Box 248
710 James Bowie Drive
New Boston, Texas 75570

On behalf of: Bowie, Texas

May 18, 2005

Exhibit A



June 10, 2005

Via E Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: Docket No. AB-3 (Sub-No. 137X); Missouri Pacific Railroad Company –
Abandonment Exemption – In Red River and Bowie Counties, TX**

Dear Mr. Williams:

This refers to "Joint Motion of Rails to Trails Conservancy and Bowie County, Texas for Substitution of New Railbanker/Interim Trail Manager" ("Joint Motion") in the above proceeding.

Union Pacific Railroad Company ("UP") is the successor in interest of the Missouri Pacific Railroad Company, the railroad involved in the above proceeding. This letter is to advise that UP consents to the substitution of Bowie County as the Railbanker/Interim Trail Manager for the portion of the above rail corridor between MP 23.00 (Engineering Station 1214 + 40) at New Boston, in Bowie County, TX to MP 42.59 at the Red River County Line, as proposed in the Joint Motion.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. T. Opal".

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on the persons listed below by First Class, United States Mail:

Andrea C. Ferster, General Counsel
Rails to Trails Conservancy
1100 17th Street, N.W., 10th Floor
Washington, D.C. 20036

James M. Carlow
Bowie County Judge
P. O. box 248
710 James Bowie Drive
New Boston, TX 75570

Dated at Omaha, NE this 10th day of June, 2005.

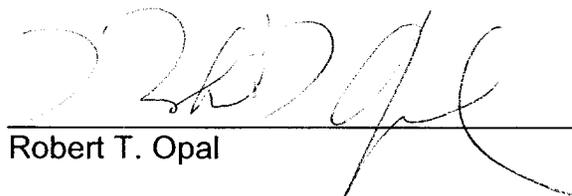

Robert T. Opal

Exhibit B

SERVICE DATE - FEBRUARY 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN RED RIVER AND BOWIE COUNTIES, TX

Decided: February 11, 1997

By decision served and published in the Federal Register (61 FR 66748) on December 18, 1996, the Missouri Pacific Railroad Company (MP) was granted as exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a railroad line extending from milepost 23.0 at New Boston, to the end of the track at milepost 61.5 near Clarksville, in Red River and Bowie Counties, TX.¹ The exemption became effective on January 17, 1997.

On December 30, 1996, Rails to Trails Conservancy (RTC) filed a timely request for issuance of a notice of interim trail use (NITU) for the railroad line to be abandoned by MP. RTC submitted a statement indicating its willingness to assume full responsibility for management of, legal liability for, and payment of taxes on, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to restoration for rail purposes. On January 3, 1997, the Union Pacific Railroad Company (UP) agreed to the imposition of a trail use condition in this proceeding.²

The trail use request was made by the date required in the abandonment decision, and RTC has stated that it will assume financial responsibility for interim trail use/rail banking and has acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. Moreover, the carrier by its agreement to the imposition of trail use has indicated a willingness to enter into negotiations. Accordingly, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate a trail use agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within the 180 days, MP 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 rail purposes.

This action 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 consideration, the decision served and published in the Federal Register on December 18, 1996, is modified to the

¹ In the same decision, the Board also exempted discontinuance of service on the line. Texas Northeastern Division, Mid-Michigan Railroad, Inc.--Discontinuance of Service Exemption--In Red River and Bowie Counties, TX, STB Docket No. AB-364 (Sub-No. 3X).

² MP has recently merged with and into UP. In this decision, however, the abandoning railroad will continue to be referred to as MP.

extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the effective date of the exemption.

3. MP may discontinue service and salvage track and related materials consistent with interim trail use/rail banking after the effective date of this decision and NITU.

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 taxes imposed on, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.

6. If the user intends to terminate trail use, it must send the Board a copy of this decision and NITU and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by July 16, 1997, interim trail use may be implemented. If no agreement is reached by that date, MP may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

Exhibit C

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610



July 7, 1997

COPY.

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, DC 20423-0001

RE: Docket No. AB-3 (Sub-No. 137X)
Missouri Pacific Railroad Company -- Abandonment Exemption --
In Red River and Bowie Counties, Texas

Dear Mr. Williams:

This is to advise that the portion of Union Pacific Railroad Company's right of way, including ballast and bridges, between milepost 23.0 at New Boston and milepost 61.5 near Clarksville, Texas was conveyed to Rails-to-Trails Conservancy under the Notice of Interim Trail Use imposed by the Surface Transportation Board effective July 3, 1997.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Anthofer".

Joseph D. Anthofer
General Attorney

Tel: 402-271-4315
Fax: 402-271-7107

cc: Mr. Simon Sidamon-Eristoff
1100 17th Street, NW
Tenth Floor
Washington, DC 20036

Exhibit D

BEFORE THE SURFACE TRANSPORTATION BOARD

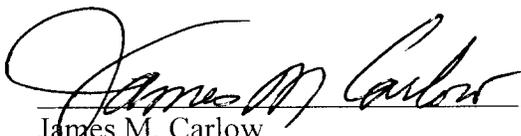
Missouri Pacific Railroad Company)
-- Abandonment Exemption --) Docket No. AB-3 (Sub-No. 137X)
in Red River and Bowie Counties, TX)
_____)

Statement of Willingness to Assume
Financial Responsibility

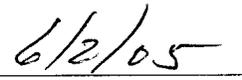
In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, Bowie County, Texas is willing, to the extent permitted by law, to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way in the above-captioned proceeding, formerly owned by Union Pacific Railroad Company (UP) and currently managed by the Rails-to-Trails Conservancy.

The property extends from M.P. 23.00 (Engineering Station 1214 + 40) at New Boston, in Bowie County, TX to M.P. 42.59, at the Red River County line, a distance of approximately 19.59 miles.¹ A map depicting the right-of-way is attached.

Bowie County acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on UP and the Rails-to-Trails Conservancy on the same date it is being served on the Surface Transportation Board.


James M. Carlow

Bowie County Judge
P.O. Box 248
710 James Bowie Drive
New Boston, Texas 75570


Date

on behalf of: Bowie, Texas

¹ See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

