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SERVICE DATE - AUGUST 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 123X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN BUTLER COUNTY, IA

Decided: August 25, 1998

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuance of Service and Trackage Rights to abandon and discontinue service over a 5.95-mile line of railroad on the Bristow Branch from milepost 288.8 near Clarksville to milepost 294.75 near Allison, in Butler County, IA. Notice of the exemption was served and published in the Federal Register on July 29, 1998 (63 FR 40581-82). The exemption is scheduled to become effective on August 28, 1998.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 11, 1998. In the EA, SEA states that the National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring UP to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

SEA also states that the State Historical Society of Iowa (SHPO) has indicated an interest in structures which are more than 50 years old on the right-of-way. SHPO states that there are three structures which UP has identified. Therefore, SEA recommends that UP shall retain its interest in and take no steps to alter the historic integrity of bridges numbered 289.47, 289.86, and 291.48 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

By petition filed August 7, 1998, Iowa Trails Council (ITC) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it could negotiate with UP for acquisition of the right-of-way for use as a trail.¹ ITC 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 the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the

¹ On August 12, 1998, ITC filed a letter withdrawing its request for a public use condition.

right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed August 10, 1998, UP indicated its willingness to negotiate with ITC for interim trail use.

ITC's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. 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. See 49 CFR 1152.29(d)(2). 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 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 July 29, 1998, 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 180 days commencing August 28, 1998, the effective date of the exemption (until February 24, 1999), and subject to the conditions that UP shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (b) retain its interest in and take no steps to alter the historic integrity of bridges numbered 289.47, 289.86, and 291.48 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
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 the 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 obligation 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 February 24, 1999, interim trail use may implemented. If no agreement is reached by that time, UP may fully abandon the line.
7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary