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SERVICE DATE - OCTOBER 8, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 114X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN WASHBURN COUNTY, WI

Decided: October 2, 1998

By decision and notice of interim trail use or abandonment (NITU) served on January 16, 1998, a 180-day period was authorized for the Wisconsin Department of Natural Resources (WisDNR), acting through the Wisconsin Department of Transportation (WisDOT) (collectively referred to as WisDNR/DOT), to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for UP's 12.68-mile line of railroad known as the Hayward Industrial Lead, extending from milepost 83.32 near Trego to milepost 96.0 near Hayward Junction, in Washburn County, WI.¹ By decision served July 13, 1998, the negotiation period under the NITU was extended an additional 180 days until January 11, 1999.

By letter filed on September 14, 1998, UP and WisDNR/DOT advised the Board that the easterly .8-mile segment of the right-of-way from milepost 95.2 to milepost 96.0 is not subject to negotiations because the segment is subject to acquisition for railroad purposes by Wisconsin Central Limited.

On September 21, 1998, the Washburn County Transit Commission (WCTC)² filed a request for issuance of a NITU pursuant to the National Trails System Act, 16 U.S.C. 1247(d), so that it can negotiate with UP for the portion of the line extending from milepost 83.32 to milepost 95.2. WCTC has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way as a trail is subject to future reconstruction and reactivation of rail service as required under 49 CFR 1152.29. By letter dated October 2, 1998, UP states that it is willing to negotiate with WCTC for trail use until January 11, 1999.

¹ Notice of the exemption was published in the Federal Register on October 20, 1997 (62 FR 54504).

² The Washburn County Board created WCTC for the purpose of preserving the Hayward Industrial Lead for future transportation use. WCTC is in the process of negotiating with UP to acquire the line for active rail use but should negotiations fail, WCTC would like the option to negotiate an interim trail use/rail banking agreement with UP for the development of pedestrian trails and bikeways.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way³ and the carrier is willing to enter into negotiations. Inasmuch as the requirements of 49 CFR 1152.29 have been satisfied and UP is willing to negotiate trail use, a NITU will be issued to WCTC, as an additional party qualified to negotiate with UP, with the trail use negotiation period running through January 11, 1999. If no agreement is reached during this period, UP may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(1).

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. The decision served on January 16, 1998, exempting the abandonment by UP 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 right-of-way extending from milepost 83.32 to milepost 95.2, until January 11, 1999.
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, or 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 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 January 11, 1999, interim trail use may be implemented. If no agreement is reached by that date, UP may fully abandon the line.

³ Because UP has been negotiating with WisDNR/DOT for trail use under the previously-issued NITUs, it has not consummated the abandonment. The NITU permitting negotiations between UP and WisDNR/DOT remains in effect.

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7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary