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SERVICE DATE – LATE RELEASE DECEMBER 17, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 263X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
COOK COUNTY, IL

Decided: December 17, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, IL, a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 FR 68497). The exemption is scheduled to become effective on December 18, 2008.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 21, 2008. In the EA, SEA indicates that the U.S. Army Corps of Engineers—Chicago District (USACE) submitted comments on the railroad's environmental report. SEA states that, because the line appears to cross the North Branch of the Chicago River, it recommends a condition requiring UP to consult with USACE regarding proposed salvaging activities and potential permitting requirements under section 404 of the Clean Water Act (33 U.S.C. 1344). SEA has provided a copy of its EA to USACE.

Comments to the EA were due on December 8, 2008. SEA did not receive any additional comments. Accordingly, the condition recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On November 25, 2008, the Village of Lincolnwood, IL (the Village), filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29 for the portion of UP's Weber Industrial Lead located in the Village of Lincolnwood, from approximately milepost 8.4 at Devon Avenue to the border with the Village of Skokie, IL, at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles. On December 9, 2008, the City of Chicago, acting by and through its Department of Transportation (the City), filed a request for the issuance of a NITU traversing the City from milepost 5.8 near Wilson Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 2.6 miles. The City and the Village have submitted statements of willingness to assume financial responsibility for the 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 potential liability), and for the payment of any and all

taxes that may be levied or assessed against, the right-of-way for trail purposes, as required at 49 CFR 1152.29, and have acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. The Village and the City also filed requests for a public use condition under 49 U.S.C. 10905. By letters filed on December 11 and 15, 2008, respectively, UP states that it is willing to negotiate with the City and Village for interim trail use for a period of 180 days following abandonment authorization.

Because both trail use requests comply with the requirements of 49 CFR 1152.29, and UP is willing to negotiate for trail use, NITUs will be issued. The parties may negotiate agreements during the 180-day period prescribed below. If the parties reach mutually acceptable final agreements, no further Board action is necessary. If no agreements are reached within 180 days, UP may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

As noted above, the Village and the City also requested a 180-day public use condition. They ask that UP be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that UP be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. The Village and the City also state that the time period is needed to complete a trail plan and to commence negotiations with the carrier.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the Village and the City have satisfied these requirements, a 180-day public use condition will be imposed, commencing from the December 18, 2008 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public

use condition, UP is not required to deal exclusively with the Village or the City, but may engage in negotiations with other interested persons.

As conditioned, 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 reconsideration, the notice served and published in the Federal Register on November 18, 2008, exempting the abandonment of the line described above, is subject to the condition that UP shall, prior to commencement of any salvage activities, consult with USACE regarding potential permitting requirements under section 404 of the Clean Water Act (33 U.S.C. 1344). Also, the notice is modified to the extent necessary (1) to implement interim trail use/rail banking as set forth below to permit UP to negotiate with the Village and the City for trail use of the subject line, for a period of 180 days commencing from the December 18, 2008 effective date of the exemption (until June 16, 2009), and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption.
3. Consistent with the public use condition imposed in this decision and notice, UP may discontinue service and salvage track and related materials. UP shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days, commencing from the effective date of the exemption to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before June 16, 2009, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line or segment of line.
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 specified date.
7. If an agreement for interim trail use/rail banking is reached by June 16, 2009, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully

abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary