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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB-33 (Sub-No. 70)]

Union Pacific Railroad Company--Abandonment--Wallace Branch, ID

On June 18, 1999, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board), environmental information required to complete the environmental compliance process and to receive final approval to abandon and salvage its Wallace Branch line. The line extends 71.5 miles from milepost 16.5 near Plummer to milepost 80.4 and/or 0.00 near Wallace, and then to milepost 7.6 near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho.¹ UP also filed a Notice of Intent to Complete Abandonment Proceeding, which was published once each week for three consecutive weeks in local newspapers in Benewah, Kootenai, and Shoshone Counties on May 26, and June 2 and 9, 1999.

BACKGROUND

On August 22, 1991, UP filed an application with the ICC seeking authority under 49 U.S.C. 10903 and 10904 to abandon and discontinue operations over the Wallace

¹ The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83873, 83846, and 83868. The Wallace Branch no longer has stations because rail service was discontinued in accordance with the approval of the predecessor agency of the Board, the Interstate Commerce Commission (ICC), and the discontinuance was upheld by the United States Court of Appeals for the District of Columbia Circuit.

Branch line. In a decision served November 2, 1992, in Docket No. AB-33 (Sub-No. 70) the ICC found that the public convenience and necessity permitted UP to abandon its Wallace Branch line. In that same decision, the ICC decided that UP could discontinue service immediately but could not fully abandon the line—salvage and permanently remove it from the rail network—until the environmental impact of the proposed abandonment was resolved. Specifically, the ICC imposed six environmental conditions² that require

² 1. UP shall not salvage any railroad infrastructure, including the rail and ties, along the entire right-of-way until it has consulted with the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency. This consultation will ensure that if and when salvage activity ultimately takes place, it will be in compliance with the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C. § 6901 et seq., and/or other applicable laws and regulations.

2. Pursuant to the U.S. Fish and Wildlife Service (“USFWS”) request, UP, prior to any salvage activity, shall determine, using National Wetland Inventory Maps, if wetlands are located along the right-of-way. If wetlands are located along the right-of-way, UP shall consult with USFWS prior to any disturbance of the right-of-way and comply with any applicable requirement of the U.S. Fish and Wildlife Coordination Act, 16 U.S.C. § 661.

3. UP shall not undertake any salvage activities on the Wallace Branch until compliance with § 7 of the Endangered Species Act of 1973, 16 U.S.C. § 1531, has been completed. As a part of the § 7 compliance process, UP shall retain an independent biological consultant, to work under the supervision of the Board’s Section of Environmental Analysis (SEA) and in cooperation with USFWS to prepare a biological assessment.

4. A Water Pollution Control Act permit under 33 U.S.C. § 1251, et seq., may be required prior to salvage of the portion of the Wallace Branch where it crosses the Coeur d’Alene River. Prior to any salvage activities, UP shall contact the Idaho Department of Health and Welfare, Division of Environmental Quality, to determine if such a permit is required and take the necessary steps to secure a permit.

5. The U.S. Army Corps of Engineers (CORPS) has expressed concern regarding impacts to wetlands and water quality if UP salvages the right-of-way. In addition, the CORPS has indicated that materials in the area through which the track passes should be
(continued...)

consultation and possible permitting and environmental review by various state and federal environmental agencies prior to any salvage of the track.

On judicial review (State of Idaho, et al. v. ICC, 35 F.3d 585 (D.C. Cir. 1994)), the court affirmed the ICC's decision to permit UP's immediate discontinuance of rail operations. Thus, that portion of this case is administratively final and no longer at issue. In addition, however, the court found that the ICC's environmental analysis was not complete because the ICC did not have all of the information to take a "hard look" at the environmental impact of salvage operations on the line. Accordingly, the court remanded the ICC's salvage authorization.

Pursuant to the court's decision, the ICC, by decision issued in December 1994, reopened that portion of the case to complete the environmental analysis of salvage and vacated its conditional authorization of salvage (except for the portion of the line within the Bunker Hill Superfund site).³ Therefore, the grant of abandonment authority in this proceeding is not final, and UP cannot conduct salvage activities on the portion of the line

²(...continued)

tested prior to any attempt to remove it. Accordingly, UP shall consult with the CORPS prior to undertaking any salvage activities to determine what appropriate mitigation may be required.

6. UP shall retain its interest in and take no steps to alter the historic integrity of all structures, including the line itself, that are 50 years old or older until completion of the § 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f.

³ Section 121(e)(1), 42 U.S.C. 9621(e)(1), relieves UP of the requirement to obtain ICC or Board approval if it salvages track in connection with remediation carried out in compliance with the Comprehensive Environmental Response, Compensation and Liability Act.

outside the Superfund site before it submits the necessary environmental documentation to complete the environmental compliance process and receives final approval from the Board to salvage that portion of the line.

ENVIRONMENTAL COMPLIANCE

On June 18, 1999, UP filed environmental documentation with the Board, that UP believes responds to the ICC's six environmental conditions, the court remand, and the ICC's decision reopening this proceeding. UP's environmental documents include (1) an Environmental Evaluation/Cost Analysis and a Track Salvage Work Plan developed in consultation with and with the approval of the U.S. Environmental Protection Agency and the Idaho Department of Environmental Quality; (2) relevant National Wetland Inventory Maps; (3) a biological assessment required by section 7 of the Endangered Species Act; (4) a cultural resource inventory report; and (5) correspondence from State and local government agencies. UP indicates that copies of these documents were made available for public review and comment for 20 days in May and June, 1999, at several locations near the Wallace Branch and were provided to interested persons who requested them. No comments were received by UP.

Interested persons should be aware that the SEA intends to prepare a Supplemental Environmental Assessment (Supplemental EA)⁴ analyzing UP's environmental documentation, including any comments received and preliminarily determining whether the outstanding environmental issues have been resolved and UP has fully complied with the

⁴ SEA issued an Environmental Assessment for public review and comment on September 27, 1991, in connection with UP's original abandonment application.

Docket No. AB-33 (Sub-No. 70)

environmental review process. The Supplemental EA will be served on all persons on the Board's service list in Docket No. AB-33 (Sub-No. 70) and upon other affected agencies. Any other persons who would like to obtain a copy of the Supplemental EA must contact SEA.

There will be a 30-day period for all interested persons and agencies to review and comment on the Supplemental EA. Based on SEA's independent review of UP's environmental documentation, any further environmental review and consultation by SEA, and consideration of all timely comments received on the Supplemental EA, SEA will make final environmental recommendations to the Board. The Board will then issue a final decision granting or denying UP final authority to abandon the line and salvage the portion outside of the Superfund site, imposing any future environmental mitigation that it deems appropriate if final approval to abandon is granted.

Any offer of financial assistance (OFA) under 49 CFR 1151.27(b)(2) will be due no later than 10 days after service of a decision granting final approval for abandonment. Each offer must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following any final approval by the Board to abandon and salvage the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 7, 1999. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.1(f)(27). If a trail use request is filed, UP will notify the Board whether and with whom it intends to negotiate a trail use agreement no later than September 22, 1999.

Docket No. AB-33 (Sub-No. 70)

On August 3, 1999, the State of Idaho (State) and the Coeur d’Alene Tribe (Tribe) filed a request that a Certificate of Interim Trail Use (CITU) be issued and enclosed its “Statement of Willingness to Assume Financial Responsibility.”⁵ The State and the Tribe need not refile their trail use request, which will be considered by the Board at the time of the issuance of its final decision in this matter.

All interested persons may file written comments with the Board on any remaining issues no later than September 7, 1999.

All filings in response to this notice must refer to Docket No. AB-33 (Sub-No. 70) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001, and (2) Thomas Greenland, Environmental Counsel, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179, (402) 271-4634.

Persons seeking further information concerning abandonment procedures may contact the Board’s Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 45 CFR part 1152. Questions concerning environmental issues may be directed to Phillis Johnson-Ball at the SEA at (202) 565-1530.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

⁵ The ICC had received a request for the issuance of a CITU permitting interim trail use on the entire line in August 1995. The Board denied the trail use request as premature by decision issued November 15, 1996.

Docket No. AB-33 (Sub-No. 70)

Decided: August 5, 1999.

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

Vernon A. Williams

Secretary