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April 1, 2021

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 East Street, S.W., Room 100
Washington, DC 20423-0001

RE: STB Docket No. AB-433 (Sub-No. 2X) Idaho Northern & Pacific Railroad
Co. - Abandonment Exemption - in Washington and Adams Counties, Idaho.

Ms. Cynthia T. Brown:

This letter is filed by the Friends of the Weiser River Trail (the Friends) which seek to vacate in part, if deemed necessary by the Surface Transportation Board (STB), the Notice of Interim Trail Use (NITU) previously served in the Docket No. AB-433 (Sub-No. 2X). Pursuant to 49 C.F.R. § 1152.29(d)(2) a copy of the NITU is attached as Exhibit A.

The Friends seek to terminate interim trail use/rail banking on an approximately 28,992 square foot portion of the right-of-way subject to the NITU as further described herein. *The STB may decide that a vacation of the NITU in this particular case is not necessary due to the fact that the subject property is extra-width property that in no way affects the length of the trail or potential resumption of rail service.*

On previous occasions the STB has determined the Friend's request to modify or vacate the NITU in part was not necessary where, as here, the right-of-way would be narrowed, but would be adequate for potential future rail service. Under these circumstances, the STB determined it was not necessary to vacate in part or otherwise modify the NITU, allowing the Friends to dispose of extra-width portions of the right-of-way that was not needed for the resumption of the rail service over the subject line. Attached as Exhibit B is a copy of the STB Decision dated December 26, 2012 in Docket No. AB 433 (Sub-No. 2X) so holding.

The extra-width property to be sold will involve an approximately 28,992 square foot strip of land which is a portion of Lots 1-6, Block 17, in Weiser, Idaho located along the northern edge of the subject line right-of-way (Exhibit C provides a survey and

contains a legal description of said property). Use of the extra-width property by the buyers will not disrupt the continuity of the subject line for rail restart purposes as it is located outside of the 50 feet of centerline protection requirement for rail banking.

The property has been professionally surveyed by a certified Idaho surveyor and the subject property is situated 50 feet from centerline at its closest point. (See Exhibit C which details a survey showing the property and its 50 foot distance from the Centerline). Exhibit D shows an aerial photo of the location of the subject property and the 50 foot right of way in relation to the Weiser River Trail.

The Friends and the proposed purchaser of the property have already advised and discussed the land sale proposal with Union Pacific, the former owner of the land, and Union Pacific has provided no objection to the sale of the property. Union Pacific is expected to file a concurrent letter confirming that it does not object to the sale.

Furthermore, the undersigned hereby certifies that I have caused to be served copies of this letter upon the following Parties of Record in this proceeding, by U.S. Certified Mail with Return Receipt Requested.

Union Pacific Railroad Company
Attn: Mark H. Shumate, Jr.
101 North Wacker Drive Rm 1920
Chicago, Illinois, 60606-1718

Idaho Northern & Pacific Railroad Company
Attn: Neil Cox, General Manager
119 North Commercial Avenue
Emmett, Idaho 83617

In conclusion, the Friends respectfully request that the STB acknowledge their acceptance of the proposed land transfer on or before May 1, 2021 and any necessary vacation of the NITU to the extent necessary, over the 28,992 square feet of property located on the northern boundary of the Subject Line in Weiser, Idaho as more fully described herein. The NITU will remain effective and the Friends will continue interim trail use over all remaining portions of the subject line.

Sincerely,

/s/

Deborah A. Ferguson
Ferguson Durham PLLC

Counsel for the Weiser River Trail

21436
DO

SERVICE DATE - FEBRUARY 28, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-433 (Sub-No. 2X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--
ABANDONMENT AND DISCONTINUANCE EXEMPTION--
IN WASHINGTON AND ADAMS COUNTIES, ID

Decided: February 24, 1997

On December 28, 1995, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding which authorized a 180-day period for the Idaho Department of Parks and Recreation (IDPR) to negotiate an interim trail use/rail banking agreement with Idaho Northern & Pacific Railroad Company (IN&P).² The NITU negotiation period was scheduled to expire on June 25, 1996.

By letter dated May 31, 1996, IDPR requested a 180-day extension of time until December 21, 1996, to negotiate under the NITU. IDPR stated that the parties had been delayed in their negotiations because IN&P had recently transferred the corridor to Union Pacific Railroad Company (UP), and that IDPR now had to start the negotiation process with UP. By letter filed June 14, 1996, UP agreed to the extension request and indicated that the involved line had been reconveyed to it on May 14, 1996.

On June 17, 1996, the Coalition of Concerned Citizens (CCC) asked the Board to reject IDPR's extension request because the request was submitted in an untimely fashion and was made without

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 16 U.S.C. 1247(d). Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² On March 17, 1995, IN&P had filed a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to: (1) abandon approximately 83.1 miles of rail line between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, ID; and (2) discontinue trackage rights over a rail line currently owned and operated by Union Pacific Railroad Company (UP) between milepost 0.0 and milepost 1.0 in Weiser, ID. By decision served November 1, 1995, an exemption was granted, subject to standard labor protective, environmental, and public use conditions. The exemption became effective on December 1, 1995.

EXHIBIT

A

tabbles

notification to adjacent property owners or members of the public in Washington and Adams Counties. On June 21, 1996, two additional NITU requests for 180 days each were filed by Friends of the Weiser River Trail, Inc. (Friends) and the City of Weiser, ID (the City).³ By letter received June 24, 1996, UP agreed to negotiate with those parties for trail use.

By decision served July 5, 1996, the Board, by order of the Director of the Office of Proceedings directed this proceeding to be held in abeyance to allow IN&P and UP to clarify the status of the 83.1-mile line between Weiser and Rubicon, ID. The Board concluded that the statement made in IDPR's May 31 letter (that IN&P had recently transferred the corridor to UP) and UP's statement in its June 14 letter (that the involved line had been reconveyed to it) raised questions that needed addressing prior to Board action on the NITU extension request. Specifically, the Board noted that it was not clear how IN&P could have conveyed the property to UP without violating the terms of the NITU issued by the former Interstate Commerce Commission (ICC) on December 28, 1995. Nor was it clear how IN&P could have conveyed the property, an active line of railroad, because abandonment had not been consummated, to UP without Board authorization. On July 12, 1996, IN&P and UP jointly filed a response to the Board's July 5 decision.

By decision served November 14, 1996, the Board stated that because the line had not been fully abandoned, it was subject to Board jurisdiction at the time UP acquired it from IN&P; that the acquisition of a line of railroad by a rail carrier from another rail carrier is a transaction subject to Board jurisdiction under 49 U.S.C. 11323(a)(2); and that UP's acquisition of the line required, but had not received, Board approval under section 11323 or exemption from that approval under section 10502. Accordingly, the Board: (1) continued to hold the proceeding (including the NITU extension request) in abeyance pending further order; (2) directed UP either to undo its acquisition from IN&P of the subject rail line or to file an application or a request for exemption to acquire the line within 30 days of the November 14 service date; and (3) denied a petition for administrative review.⁴

In compliance with the Board's November 14 decision, UP filed a notice of exemption on December 12, 1996 in Union Pacific Railroad Company--Acquisition Exemption--Idaho Northern & Pacific Railroad Company, STB Finance Docket No. 33305 (STB served Jan. 3, 1997), to acquire the involved line of railroad from IN&P, subject to negotiations for trail use. UP noted in the notice of exemption that it had no plan to reactivate rail service on the

³ The City had actually sought trail use over a .5 mile segment of line not included in the 83.1 miles of rail line in this proceeding. On July 29, 1996, the Board exempted UP's abandonment of the .5 mile segment in Union Pacific Railroad Company--Discontinuance of Service Exemption--in Washington County, ID, STB Docket No. AB-33 (Sub-No. 100X) (STB served July 29, 1996). The City filed a NITU request in that proceeding, which request was granted in a decision and notice of interim trail use or abandonment served September 18, 1996.

⁴ On July 24, 1996, Ron D. Blendu, Donna Servatius, and Dave C. Springer, on behalf of CCC, filed a petition for administrative review of the July 5 decision.

line at the present time, although reactivation for rail service would be possible in the future if the line were conveyed to a trail user under the Trails Act; and that, if trail use negotiations were unsuccessful, it would abandon the line pursuant to the authorization granted in Docket No. AB-433 (Sub-No. 2X).

By letter filed December 10, 1996, IDPR had notified the Board that Friends would take its place as the new trail use negotiating party.⁵ By letter filed January 13, 1997, UP agreed to the pending extension request and suggested that the negotiation period be extended for a period of 180 days from the service date of this decision.

DISCUSSION AND CONCLUSIONS

The purpose of section 1247(d) of the Trails Act, 16 U.S.C. 1247(d), is to preserve rail corridors for possible reactivation of rail service (rail banking) by permitting and encouraging their interim use as recreational trails. See Ex Parte No. 274 (Sub-No. 13B), Policy Statement on Rails to Trails Conversions, 55 FR 4026-28 (Feb. 6, 1990). The Trails Act ensures that the right-of-way remains intact by authorizing interim trail use before abandonment occurs.

Because the railroads here have continually agreed to negotiate for trail use, abandonment of this line has not been consummated, Board jurisdiction over the matter continues, and the NITU originally issued in December 1995 may be extended. Moreover, as the new owner of the line, UP, is willing to continue trail use negotiations and has agreed to a new 180-day negotiating period, the sought extension will be granted.⁶ An extension of time here will promote the establishment of trails and rail banking consistent with the Trails Act. Moreover, because UP has consented to the substitution of Friends for IDPR as the new trail use negotiating party, that request will be granted as well. Finally, CCC's petition to reject IDPR's extension request will be denied on grounds that all required notice was effected and because the action taken here otherwise moots CCC's petition.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

⁵ Friends has submitted the requisite statement of willingness to assume financial responsibility for interim trail use/rail banking in compliance with 49 CFR 1152.29, and has acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service.

⁶ So long as abandonment has not been consummated and negotiations are continuing, the negotiating period may be extended beyond the initial 180 days provided in our rules. See Burlington Northern Railroad Company--Abandonment Exemption--In Franklin, Adams, Whitman, Lincoln, and Spokane Counties, WA (ICC Docket No. AB-6 (Sub-No. 295X) (ICC served Dec. 11, 1990).

1. CCC's petition to reject IDPR's extension request is denied.

2. The decision and notice of interim trail use served December 28, 1995, is modified to reflect the fact that Friends of the Weiser River Trail, Inc. is authorized to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company.⁷

⁷ Because both the railroad and the prospective trail user differ from the initial negotiating parties, we are issuing a new NITU here.

Docket No. AB-433 (Sub-No. 2X)

3. The negotiation period under the NITU is extended for 180 days from the service date of this decision.

4. This decision is effective on the service date.

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

Vernon A. Williams
Secretary

42801
DO

SERVICE DATE – DECEMBER 27, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 433 (Sub-No. 2X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY—ABANDONMENT
AND DISCONTINUANCE EXEMPTION—IN WASHINGTON AND ADAMS COUNTIES,
IDAHO

Decided: December 26, 2012

On February 28, 1997, the Board served a notice of interim trail use or abandonment (NITU) authorizing Friends of the Weiser River Trail, Inc. (Friends), to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for approximately 83.1 miles of rail line between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, Idaho (the Line).¹ On June 19, 1997, UP filed a letter notifying the Board that it had reached an agreement with Friends for interim trail use/rail banking. Shortly thereafter, UP notified the Board that the Line (including ballast, bridges and culverts) between milepost 0.5 near Weiser and milepost 84.1 at Rubicon and an adjacent 0.5 mile line² had been conveyed to Friends in accordance with the Trails Act, and Friends notified the Board that it had acquired both the Line and the adjacent 0.5-mile line.

On November 29, 2012, Friends filed a letter requesting that the Board vacate the NITU, in part, to the extent it may apply to property lying outside of a 100-foot width of right-of-way in Starkey Hot Springs that was surveyed in May 2009. According to Friends, a dispute exists as to

¹ Originally, the Interstate Commerce Commission, the Board's predecessor, in a decision served on November 1, 1995, had exempted Idaho Northern & Pacific Railroad Company from the prior approval requirements of 49 U.S.C. §§ 10903-04 to abandon the Line and discontinue trackage rights over a rail line owned and operated by UP between milepost 0.0 and milepost 1.0 near Weiser.

² See Union Pac. R.R.—Discontinuance of Service Exemption—in Washington Cnty., Idaho, AB 33 (Sub-No. 100X) (STB served July 29, 1996); 61 Fed. Reg. 39512. There, the Board exempted UP's abandonment of a 0.5-mile segment of rail line adjacent to the Line, extending from milepost 0.5 to the end of the segment at milepost 1.0, near Weiser, in Washington County, Idaho. On September 18, 1996, the Board issued a NITU in response to a trail use request filed by the City of Weiser, Idaho. During the negotiating period that followed, Friends also filed a NITU request for the segment. UP indicated its willingness to negotiate with Friends for trail use of the segment, and the Board served a NITU on December 20, 1996, authorizing Friends to negotiate an interim trail use/rail banking agreement with UP.



whether any right-of-way interests extend beyond the surveyed 100-foot wide right-of-way, and that dispute includes whether a wider right-of-way was originally acquired by the originating railroad, and if so, whether such interests were abandoned or forfeited. Friends further asserts that irrespective of this dispute, to the extent any such right-of-way interests did or do exist, any property lying outside the 100-foot width of the right-of-way would not be needed for potentially reactivating rail service over the Line in the future.

Asserting that it intends to quitclaim to the adjoining landowners any right-of-way interests that it may have acquired from UP that lie outside of the surveyed 100-foot wide right-of-way, Friends requests that the Board reopen this proceeding and vacate the NITU, in part, so that to the extent any right-of-way interests exist or existed outside of the 100-foot width of right-of-way in Starkey Hot Springs that was surveyed in May 2009, those interests now may be abandoned pursuant to the Board's authority. Friends also states that it will remain the trail manager for the remaining 100-foot wide right-of-way. UP consented to Friends' request in a letter filed on December 14, 2012.

Friends' petition to modify or vacate the NITU, in part, invokes 49 C.F.R. § 1152.29. The provisions in those regulations for vacating NITUs were developed to apply to situations where the length of a railbanked line would be shortened—i.e., where the abandonment would be partly consummated—not where, as here, the right-of-way would be narrowed, but would be adequate for potential future rail service. Given the circumstances presented here, it is not necessary to vacate in part or otherwise modify the NITU.³ This decision, however, clarifies that any right-of-way interests that exist or existed outside of the Line's 100-foot wide right-of-way in Starkey Hot Springs that was surveyed in May 2009 are no longer part of the NITU in this proceeding and may be abandoned.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Friends' petition is granted as described above.
2. This decision is effective on its service date.

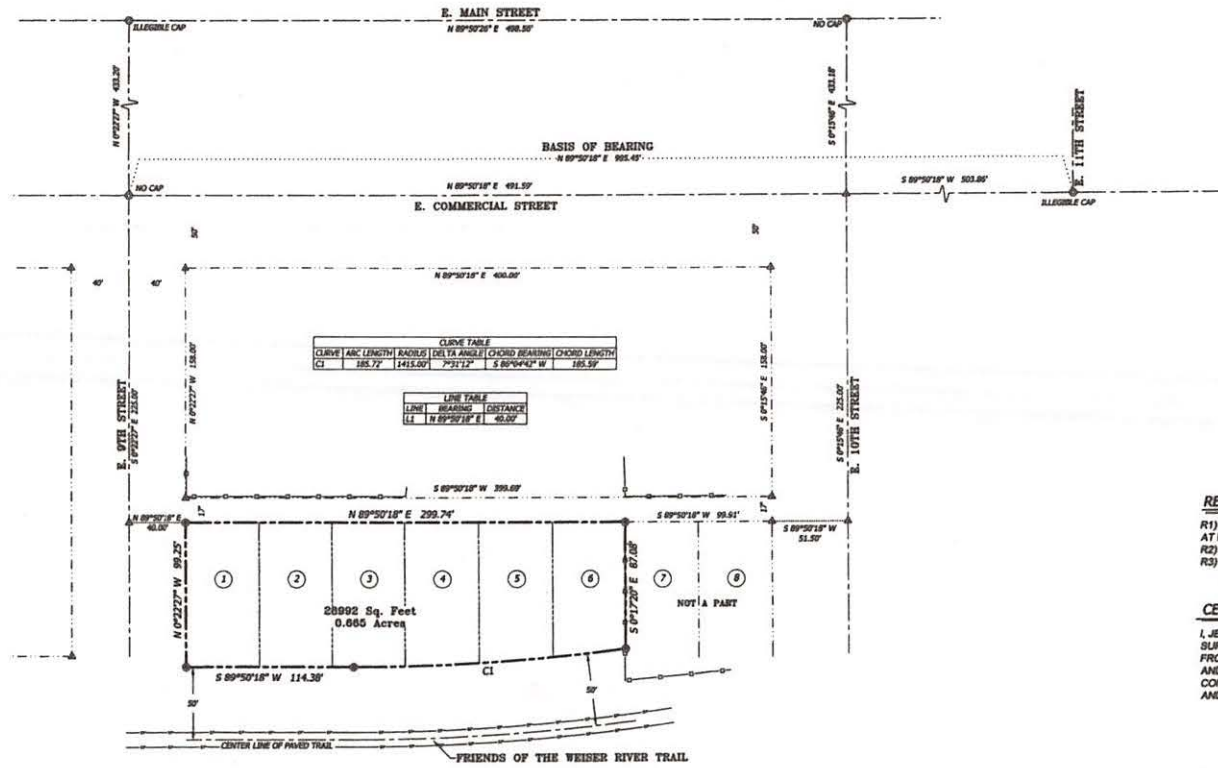
By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ See, e.g., Missouri Pac. R.R.—Aban. Exemption—in Indian River & Bowie Cntys., Tex., AB 3 (Sub-No.137X) (STB served Oct. 6, 2011).

242413

**RECORD OF SURVEY
FOR FRIENDS OF THE WEISER RIVER TRAIL
A PORTION OF LOTS 1-6, BLOCK 17, TROTT ADD. TO WEISER, ID.
WITHIN THE SE 1/4 OF THE NE 1/4 OF SECTION 32, T. 11 N., R. 5 W., B.M.,
CITY OF WEISER, WASHINGTON COUNTY, IDAHO
2020**

Instrument # 242413
STATE OF IDAHO, COUNTY OF WASHINGTON
18-03-2020 11:53:29 AM No. of Pages: 1
Recorded for: SAWTOOTH LAND SURVEYING
DOUGLAS KATHLEEN City: ESB
EX-001616 Recorder: *Jeff Beagley*
ID# 11574



LEGEND

- PROPERTY BOUNDARY LINE
- - - OTHER DEED LINE
- CENTER LINE
- - - EXISTING WOOD FENCE
- ⊙ FOUND 5/8" REBAR AS NOTED
- ⊙ SET 5/8" REBAR/CAP PLS 11574
- △ CALCULATED POINT
- () RECORD INFORMATION
- ① EXISTING LOT NUMBER

REFERENCES:

- R1) WATKINS 2ND ADDITION, BOOK 1 OF PLATS, AT PAGE 3-D, WASHINGTON COUNTY RECORDS
- R2) RECORD OF SURVEY INST. NO. 153228
- R3) RECORD OF SURVEY INST. NO. 154523

CERTIFICATE OF SURVEYOR

I, JEFF BEAGLEY, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, LICENSED BY THE STATE OF IDAHO, AND THAT THIS MAP WAS DRAWN FROM AN ACTUAL SURVEY ON THE GROUND UNDER MY DIRECT SUPERVISION, AND ACCURATELY REPRESENTS THE POINTS MAPPED HEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS, SURVEYS, AND THE CORNER PERPETUATION AND FILING ACT, IDAHO CODE.



JEFF BEAGLEY

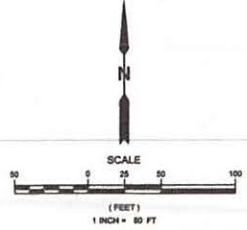
P.L.S. 11574

SURVEY INDEX NO. 1154-32-1-0-0-01-5-8

SAWTOOTH
Land Surveying, LLC

2030 S. WASHINGTON AVE.
EMMETT, ID 83617
(208) 398-8104
FAX (208) 398-8105
WWW.SAWTOOTHLS.COM

SHEET:	DATE:	DRAWN BY:	CHECKED BY:	JOB#:
1 OF 1	11/1/2020	BRT	NAB	120800



SURVEYOR'S NARRATIVE:

THIS SURVEY WAS PREPARED FOR THE FRIENDS OF THE WEISER RIVER TRAIL TO SPLIT LOTS 1-6 OF BLOCK 17 OF WATKINS 2ND ADDITION FROM THE FRIENDS OF THE WEISER RIVER TRAIL PARCEL.

THE CENTER LINE INTERSECTION MONUMENTS AND RECORD RIGHT OF WAY DISTANCES WERE USED TO ESTABLISH THE LOCATION OF THE BLOCK CORNERS. THE BLOCK IS SHORTER THAN THE ORIGINAL PLATTED BLOCK AS SHOWN ON THE OFFICIAL PLAT OF WATKINS 2ND ADDITION.

NO INTERIOR MONUMENTS WERE LOCATED WITHIN THE BLOCK. THE LOTS WERE PROPORTIONED IN FROM THE BLOCK CORNERS AND FROM THE PROJECTED STREET CENTER LINES.

PAT TRINOR, THE PRESIDENT OF THE FRIEND OF THE WEISER RIVER TRAIL, DETERMINED THAT A 50-FOOT RIGHT OF WAY FROM THE CENTER OF THE PAVED PATHWAY WOULD BE USED AS THE SOUTHERLY BOUNDARY OF LOTS 1-6.



Bj1352

Weiser Lot Sale
Lots 1-6 for sale

9th Street

10th Street

Lots 1 to 6 for sale

WRT ROW 50 ft from centerline

Weiser River Trail

Weiser River Trail

Google Earth
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EXHIBIT
D
"tabbles"



100 ft