

SERVICE DATE – MAY 4, 2021

SURFACE TRANSPORTATION BOARD

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,
IDAHO

Decided: May 4, 2021

On November 1, 1995, the Board's predecessor, the Interstate Commerce Commission, authorized Idaho Northern & Pacific Railroad Company (IN&P) 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, Idaho (the Line); and (2) discontinue trackage rights over a rail line owned and operated by Union Pacific Railroad Company (UP) between milepost 0.0 and milepost 1.0 in Weiser, Idaho.¹ The exemption became effective on December 1, 1995. By decision and notice of interim trail use or abandonment (NITU) served December 28, 1995, a 180-day period was authorized for the Idaho Department of Parks and Recreation (IDPR) to negotiate with IN&P for interim trail use/rail banking of the Line's right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.

On January 3, 1997, UP was authorized to acquire the Line. See Union Pac. R.R.—Acquis. Exemption—Idaho N. & Pac. R.R., FD 33305 (STB served Jan. 3, 1997). On February 28, 1997, a replacement NITU was issued for the Line's right-of-way, substituting Friends of the Weiser River Trail, Inc. (Friends) as the trail sponsor and UP as the new owner of the Line. By letter filed June 19, 1997, UP notified the Board that it had reached an interim trail use/rail banking agreement with Friends, and on August 13, 1997, UP further notified that Board that it had conveyed the right-of-way (including ballast, bridges, and culverts) between milepost 0.5 near Weiser and milepost 84.1 at Rubicon to Friends.²

¹ The exemption was subject to standard labor protective conditions, a public use condition, which has since expired, two salvage-related environmental conditions, and a historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA).

² UP was authorized to abandon a 0.5-mile segment adjacent to the Line, extending from milepost 0.5 to the end of the segment at milepost 1.0 near Weiser, in Union Pacific Railroad—Discontinuance of Service Exemption—in Washington County, Idaho, AB 33 (Sub-No. 100X) (STB served July 29, 1996). A NITU was issued in that docket on December 20, 1996, authorizing Friends to negotiate with UP for interim trail use/rail banking for that segment.

On November 30, 2012, Friends filed a request under 49 C.F.R. § 1152.29(d)(2) to partially vacate the NITU served on February 28, 1997, to the extent it may apply to property lying outside of the 100-foot width of the Line's right-of-way in Starkey Hot Springs that was surveyed in May 2009. (Friends Mot. 1-2, Nov. 30, 2012.) A decision served December 27, 2012 determined that it was unnecessary to partially vacate the NITU but clarified that any interests in the Line's right-of-way that existed or may have existed outside of the Line's 100-foot wide right-of-way in Starkey Hot Springs that was surveyed in May 2009 were no longer part of the NITU and could be abandoned. See Idaho N. & Pac. R.R.—Aban. & Discontinuance Exemption—in Wash. & Adams Cntys., Idaho, AB 433 (Sub-No. 2X), slip op. at 2 (STB served Dec. 27, 2012).

On April 1, 2021, Friends filed another request under 49 C.F.R. § 1152.29(d)(2) to partially vacate the NITU served on February 28, 1997. Specifically, Friends seeks to terminate interim trail use/rail banking on an approximately 28,992 square foot parcel of land (the Parcel), which is a portion of Lots 1-6, Block 17, in Weiser located along the northern edge of the Line's right-of-way. (Friends Mot. 1, Apr. 1, 2021.) According to Friends, this portion of the Line's right-of-way is extra-width property, and its use by a prospective purchaser would not disrupt the reactivation of rail service on the Line, as it is located at least 50 feet from the centerline of the Line at its closest point. (*Id.* at 2.) Friends states that it will continue interim trail use/rail banking over the remainder of the Line's right-of-way. (*Id.*) On April 15, 2021, UP replied, indicating that it has no objections to Friends' request. (UP Reply 1, Apr. 15, 2021.)

Friends has complied with the requirements of 49 C.F.R. § 1152.29(d)(2). Its request to vacate the NITU with respect to the Parcel will be granted and a replacement NITU issued for the remainder of the Line's right-of-way.³

Additionally, the Board's Office of Environmental Analysis (OEA) has determined that the Parcel does not appear to contain any buildings or structures that could be historic (i.e., that are at least 50 years old). OEA therefore has concluded that the Board has satisfied its responsibilities under Section 106 of the NHPA with respect to the Parcel and has recommended that the Section 106 condition be removed from the Parcel (but retained for the remainder of the Line's right-of-way).⁴

³ Since the December 27, 2012 decision finding it unnecessary to vacate the NITU, in more recent cases, NITUs have been vacated and replacement NITUs issued to narrow the width of rights-of-way subject to interim trail use/banking agreements. See, e.g., Greenville Cnty. Econ. Dev. Corp.—Aban. Exemption—in Greenville Cnty., S.C., AB 490 (Sub-No. 2X) (STB served Mar. 25, 2019); Union Pac. R.R.—Aban. Exemption—Whittier Junction-Colima Junction Line in L.A. Cnty., Cal., AB 33 (Sub-No. 93X) (STB served July 20, 2018); Union Pac. R.R., AB 33 (Sub-No. 93X) (STB served Jan. 27, 2016).

⁴ Compliance with the Section 106 condition and the other conditions imposed in the November 1, 1995 decision is not required with respect to the remainder of the Line's right-of-way covered by the interim trail use/rail banking agreement for the duration of the agreement. However, those conditions will apply to any portion of the Line's right-of-way for which interim trail use/rail banking is terminated in the future.

Based on OEA's recommendation, the Section 106 condition will be removed from the Parcel only. Accordingly, abandonment of the Parcel may be consummated, subject to the two salvage-related conditions noted above (to the extent that any salvaging of rail track will take place).

It is ordered:

1. This proceeding is reopened.
2. The NITU served on February 28, 1997, is vacated with respect to the Parcel.
3. A replacement NITU applicable to the remainder of the Line's right-of-way is issued.
4. The Section 106 historic preservation condition imposed in the November 1, 1995 decision is removed with respect to the Parcel, as discussed above.
5. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.