

29556
DO

SERVICE DATE - AUGUST 28, 1998

SURFACE TRANSPORTATION BOARD¹

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-33 (Sub-No. 79)

UNION PACIFIC RAILROAD--ABANDONMENT EXEMPTION--IN
CANYON AND ADA COUNTIES, ID (STODDARD BRANCH)

Decided: August 26, 1998

By decision served October 13, 1993, Union Pacific Railroad Company (UP) was granted an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon a segment of its Stoddard Branch, consisting of 15.90 track miles and 1.00 mile of rail sidings, located between milepost 1.75, near Nampa, and the end of the line at milepost 17.65, near Stoddard, in Canyon and Ada Counties, ID. The decision also rejected a request filed by the City of Nampa (City) for imposition of an interim trail use condition for the 3.87-mile portion of the right-of-way located between milepost 1.75 and milepost 5.62 near Deer Flat Road. Although UP was agreeable to a trail use condition for this portion of the line, the request was not considered because it failed to meet the requirements set forth in 49 CFR 1152.29(a)(2) and (3). The City, however, was given until October 25, 1993, to file a proper trail use request.²

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. While the law pertinent to the matters addressed in this decision was the same prior to the ICCTA as it is after the ICCTA, citations in this decision are to the former sections of the statute and regulations.

² Notice of the abandonment was published in the Federal Register on October 13, 1993 (58 FR 52978).

A Certificate and Decision (C&D) was served on November 26, 1993, authorizing UP to abandon the entire described line, subject to conditions.³ The C&D became effective on December 26, 1993.

By Decision and Certificate of Interim Trail Use or Abandonment (CITU) served December 23, 1993, the ICC, at the request of the City, modified the C&D served on November 26, 1993, to authorize a 180-day period for the City and UP to negotiate an interim trail use/rail banking agreement for the segment of the right-of-way between milepost 1.75 and milepost 5.62 near Deer Flat Road.⁴

On August 19, 1998, the City filed a petition to reopen the abandonment proceeding, and for partial vacation of the CITU served December 23, 1993, as to the right-of-way between milepost 4.10 and milepost 5.62.⁵ The City states that it is no longer willing to assume financial responsibility for that portion of the trail and withdraws its Statement of Willingness to Assume Financial Responsibility. The City also states that UP has no objection to the partial vacation of the CITU. The City requests that partial vacation of the CITU as to the line segment be made effective on July 15, 1998.

The City has complied with the requirements of 49 CFR 1152.29(d)(2) regarding a request to vacate the CITU. Therefore, this proceeding will be reopened and the partial vacation of the CITU will be granted. No explanation has been given for the requested July 15, 1998 effective date and there is no apparent basis for making the partial vacation effective any earlier than the effective date of this decision. Under the circumstances, UP may fully abandon the line between milepost 4.10 and milepost 5.62.

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

³ These conditions were (a) the employee protective conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979); (b) the requirement that UP retain its interest in and take no steps to alter the historic integrity of Bridge No. 4.12 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (c) the requirement that UP consult with the U.S. Fish and Wildlife Service's regional office at Boise, ID, prior to salvaging or disposing of the entire right-of-way.

⁴ The negotiation periods under the CITU were extended by decisions served July 5, 1994, August 24, 1994, and September 28, 1994. The parties reached a trail use agreement, effective September 20, 1994.

⁵ The City states that it and Albert and Melinda Birt have reached an Easement Agreement affecting part of the Stoddard Branch that eliminated the CITU between milepost 4.10 and milepost 5.62.

It is ordered:

1. This proceeding is reopened.
2. The CITU served December 23, 1993, is vacated with respect to the line segment between milepost 4.10 and milepost 5.62. UP may fully abandon the segment for which the CITU has been vacated.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary