

SERVICE DATE – DECEMBER 3, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-170 (Sub-No. 1X)

SUNSET RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN KERN
COUNTY, CA

Decided: November 30, 2007

Sunset Railway Company (SRY) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 16.3-mile line of railroad, known as the Sunset Subdivision, extending between milepost 20.0, west of Levee, and milepost 36.3, at Taft, in Kern County, CA. Notice of the exemption was served and published in the Federal Register on December 21, 2004 (69 FR 76521-22).¹ The exemption became effective on January 20, 2005.

By decision served on January 18, 2005 (January 2005 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that SRY: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and (2) notify the U.S. Department of Commerce, National Geodetic Survey, 90 days prior to salvage activities so plans could be made for the relocation of the 13 geodetic station markers identified on the line.

By letter filed on August 7, 2007, Union Pacific Railroad Company (UP)² requests removal of the section 106 historic preservation condition imposed in the January 2005 decision. UP attaches to its letter correspondence dated May 11, 2007 (May 2007 correspondence), that it sent to the California Office of Historic Preservation (State Historic Preservation Office or SHPO) in which UP indicated to the SHPO that UP had erroneously undertaken salvaging activities on the mistaken belief that the section 106 process had been fulfilled. UP also attaches correspondence from the SHPO wherein the SHPO indicates that, because salvaging of the line had been completed, it could not comment on the effects the salvaging process may have had on historic properties. In the May 2007 correspondence, UP notes that it is impossible for UP to

¹ The notice also embraced STB Docket No. AB-398 (Sub-No. 9X), San Joaquin Valley Railroad Company–Discontinuance Exemption–in Kern County, CA, in which San Joaquin Valley Railroad Company (SJVR) sought an exemption to discontinue service over the line. On May 20, 2005, counsel for SJVR advised the Board that, as of May 19, 2005, SJVR had canceled its tariffs and discontinued rail service over the 16.3-mile line.

² UP and BNSF Railway Company are the joint owners of SRY.

restore any historic property that may have existed prior to the salvaging process. However, UP indicates that, in the historic report submitted in this proceeding, the only structures that were located on the line consisted of timber pile bridges and metal deck bridges with timber piles, some of which were over 50 years old, and that, based on UP's observations, the bridges in question are not unique.

In a subsequent letter dated September 18, 2007, UP states that UP's historic preservation representative responsible for the oversight no longer works for UP. UP indicates that, to prevent a recurrence of this situation and to ensure compliance with the section 106 process, a paralegal in UP's law department has been assigned to oversee the section 106 process for abandonment proceedings that involve UP. UP states that this person has already undertaken these activities and is coordinating with the administrative staff and attorneys that are responsible for UP's abandonment program. After completion of the historic review, this person will coordinate with state SHPOs and obtain the necessary documentation that confirms completion of section 106 requirements. UP asserts that this process should provide for a more efficient, accurate, and comprehensive fulfillment of the section 106 process of the NHPA.

UP states that it is impossible to restore any historic property that may have existed prior to salvage activities. However, it appears that the only structures on the line were the bridges identified in UP's May 2007 correspondence. UP also has instituted new internal procedures to prevent similar mistakes in the future. Therefore, based on the information provided, SEA recommends that the section 106 historic preservation condition imposed in the January 2005 decision be removed. Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

The Board takes section 106 of the NHPA very seriously and views any failure to comply with the section as a matter of great concern. Accordingly, the Board admonishes UP to take all necessary training, management, and oversight steps to avoid future section 106 problems.

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 section 106 historic preservation condition imposed in the January 2005 decision is removed.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary