

SERVICE DATE – NOVEMBER 29, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 327X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION—IN CERRO GORDO COUNTY, IOWA

Decided: November 29, 2017

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuance of Service to abandon a 2.0-mile portion of UP's Rockwell Industrial Lead in Mason City, Iowa, between milepost 155.5 near Elm Street and milepost 157.5 near 19th Street (the Line).¹ Notice of the exemption was served and published in the Federal Register on November 1, 2017 (82 Fed. Reg. 50,729). The exemption is scheduled to become effective on December 1, 2017.²

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) recommending that a historic preservation condition be imposed on any decision granting abandonment authority. In the EA, OEA noted that UP provided a copy a historic report to the Iowa State Historic Preservation Office (or SHPO), pursuant to 49 C.F.R. § 1105.8(c). According to UP, there are three structures on the Line (all bridges) that are 50 years old or older. UP stated that these bridges would remain intact to facilitate potential use of the Line as a recreational trail, which is proposed by Mason City, Iowa. OEA noted that, in correspondence with UP, the SHPO stated that it had insufficient information to begin its review of the proposed abandonment. Therefore, OEA was unable to consider the SHPO's opinion before determining if the proposed project could affect historic properties. Accordingly, OEA

¹ The verified notice also includes discontinue of service by UP over a 0.5-mile portion of UP's Rockwell Industrial Lead between milepost 157.5 and milepost 158.0, near Swifts, Iowa. UP states that, after the proposed abandonment, UP will continue to provide rail service from the remaining portion of the Rockwell Industrial Lead, as well as the Mason City and Albert Lea Subdivisions of the Spine Line, which lie within one mile of the Line.

² On November 13, 2017, the M&StL Group, LLC (MSL) filed a notice of intent to file an offer of financial assistance to purchase the Line. By a decision served on November 20, 2017 (November 20 decision), the notice of intent was rejected because it did not meet the Board's requirements under 49 C.F.R. § 1152.27(c)(2)(i). Union Pac. R.R.—Aban. Exemption & Discontinuance of Serv. Exemption—in Cerro Gordo Cty., Iowa, AB 33 (Sub-No. 327X) (STB served Nov. 20, 2017). Because MSL's notice of intent was rejected, the effective date of the exemption remains December 1, 2017. On November 28, 2017, MSL filed an appeal of the November 20 decision. MSL's appeal will be addressed in a subsequent decision.

recommended that UP be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, has been completed. OEA also recommended that UP be required to report back to OEA regarding any consultations with the SHPO and the public and that UP be prohibited from filing its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

OEA issued its final EA on November 22, 2017, noting that no comments to the EA were received by the November 20, 2017 due date and reiterating its recommendation that the previously recommended historic preservation condition be imposed. Accordingly, the historic preservation condition recommended by OEA in the EA and final EA will be imposed.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On October 16, 2017, the City of Mason City, Cerro Gordo County, and the Iowa Natural Heritage Foundation (Applicants), jointly filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with UP for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the Applicants have also submitted a statement of willingness to assume financial responsibility for the right-of-way and have acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on November 17, 2017, UP agreed to negotiate with the Applicants for interim trail use.

Because the Applicants' request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, UP may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Applicants also have requested imposition of a public use condition under 49 U.S.C. § 10905 for the Line. The Applicants ask that UP be prohibited from disposing of the corridor (other than the tracks, ties, and signal equipment) except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The Applicants also ask that UP be prohibited from removing or destroying potential trail-related structures such as bridges, trestle, and tunnels. The justification for their request is that these structures have considerable value for public purposes and that the 180-day period is needed to complete negotiations with UP.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the Applicants have satisfied these requirements, a 180-day public use condition will be imposed, requiring UP to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) on the Line and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from December 1, 2017, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on May 30, 2018, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until May 28, 2018. If a trail use agreement is reached for a portion of the right-of-way prior to May 28, 2018, UP must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the Applicants but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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 notice served and published in the Federal Register on November 1, 2017, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Applicants to negotiate with UP for trail use for Line for a period of 180 days from the service date of this decision and notice, until May 28, 2018, and to permit public use negotiations as set forth below for Line for a period of 180 days commencing from the effective date of the

exemption, until May 30, 2018. The abandonment is also subject to the condition that UP shall (a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, UP may discontinue service. UP shall keep intact the right-of-way for the Line including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until May 30, 2018, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 28, 2018, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

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