

SERVICE DATE – LATE RELEASE APRIL 27, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 324X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN HARRIS AND CHAMBERS COUNTIES, TEX.

Decided: April 27, 2017

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 2.23-mile portion of the U.S. Steel Industrial Lead between milepost 2.4 in Baytown and milepost 4.63 at the east side of Cedar Bayou, in Harris and Chambers Counties, Tex. (the Line). Notice of the exemption was served and published in the Federal Register on March 29, 2017 (82 Fed. Reg. 15,549). The exemption is scheduled to become effective on April 28, 2017.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) recommending that four conditions be imposed on any decision granting abandonment authority. OEA explained that, while examining the historic impact of abandoning the Line, UP and the Texas Historical Commission (the State Historic Preservation Office, or SHPO) could not agree whether a vertical lift rail bridge known as the Cedar Bayou Bridge (the Bridge) over Cedar Bayou should be listed in the National Register of Historic Places (National Register). After reviewing the information provided by UP and UP's consultant (Summit Envirosolutions, Inc. (Summit)), and in consultation with the SHPO, OEA determined that the Bridge is a historic property eligible for including in the National Register. OEA is currently consulting with the SHPO, UP, and the Historic Bridge Foundation to develop a Memorandum of Agreement (MOA) that will mitigate the unavoidable effects to the Bridge. Therefore, OEA recommends that UP be required to retain its interest in and take no steps to alter the historic integrity of the Bridge over Cedar Bayou until the Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 has been completed.¹ OEA also recommended that UP be required to continue to consult with the SHPO, OEA, and other consulting parties regarding resolving adverse effect to the Bridge and be required to inform OEA in writing of all consultation with the SHPO regarding the Bridge.

In the EA, OEA also stated that UP requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protect wildlife species, including federally listed threatened and endangered species. USFWS submitted comments recommending that UP conduct a search to identify protected species in the

¹ OEA notes that if the condition is imposed, UP would be able to salvage track, ties, and related material from the remainder of the Line but would be barred from removing or disposing of the Bridge until the Board has removed the condition in a future decision.

project area. OEA stated that there could be wildlife present in the area near the Cedar Bayou adjacent to the Line where the Bridge is located, and if wildlife is present, the removal of the Bridge would disturb these species. Therefore, OEA recommends that, prior to undertaking the removal of the Bridge, UP shall consult with the USFWS regarding the potential for impacts to federally listed protected species related to the removal of the Bridge. UP also shall report the results of any consultation with USFWS in writing to OEA.

OEA noted that the U.S. Army Corps of Engineers (the Corps) has not commented on the potential impact of the proposed abandonment to waterways and wetlands or the potential need for a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). Although OEA believes that the removal of track, ties, and related material from the Line would not result in the discharge of any dredge or fill material into waters of the United States, the removal of the Bridge may, however, require authorization from the Corps. Therefore, OEA recommends that, prior to undertaking the removal of the Bridge, UP shall be required to consult with the Corps to determine whether a Corps permit would be required for the removal of the Bridge. UP shall also be required to report the results of any consultation with the Corps in writing to OEA.

In the EA, OEA also noted that its review has concluded that the Line is located within the Texas Coastal Management Program (CMP) boundary. The Texas Coastal Management Program (TCMP) has not provided comments on the proposed abandonment. Accordingly, OEA recommends that, prior to beginning any salvage activities, including the removal of track, ties, and related materials, UP shall be required to consult with the Texas Land Commissioner, who administers the TCMP, to determine whether state coastal management consistency certification is required. UP shall also report the results of these consultations in writing to the OEA prior to beginning salvage operations.

OEA issued its final EA on April 20, 2017, noting that no comments to the EA were received by the April 18, 2017 due date and reiterating its recommendation that the four previously recommended conditions be imposed. Accordingly, the four conditions recommended by OEA in the EA and final EA will be imposed.

Based on OEA's recommendation, 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 March 29, 2017, exempting the abandonment of the Line described above is subject to the conditions that UP shall:

(a)(i) retain its interest in and take no steps to alter the historic integrity of the Bridge until the Section 106 process of the NHPA, 54 U.S.C. § 306108, has been completed, (ii) consult with the SHPO, OEA, and other consulting parties regarding resolving adverse effect to the Bridge, (iii) inform OEA in writing of all consultation with the SHPO regarding the Bridge, and (iv) not file its consummation notice or remove or dispose of the Bridge until the Section 106 process has been completed and the Board has removed this condition;

(b) prior to undertaking the removal of the Bridge, consult with the Corps to determine whether a Corps permit would be required under Section 404 of the Clean Water Act for the removal of the Bridge and report the results of any consultation with the Corps in writing to OEA;

(c) consult with the USFWS regarding the potential for impacts to federally listed protected species related to the removal of the Bridge and report the results of any consultation with USFWS in writing to OEA; and

(d) consult with the Texas Land Commissioner to determine whether state coastal management consistency certification is required and report the results of these consultations in writing to OEA prior to beginning of salvage operations.

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

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