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SERVICE DATE - AUGUST 6, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 205X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION— IN SUTTER COUNTY, CA

Decided: August 5, 2004

By petition filed on April 20, 2004, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon and discontinue service over a line of railroad known as the Yuba City Industrial Lead, extending from milepost 136.38 near Marysville, CA, to milepost 139.77 near Colusa Junction, CA, a distance of 3.39 miles, in Sutter County, CA. Notice of the filing was served and published in the Federal Register on May 10, 2004 (69 FR 25945). A late-filed request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the City of Yuba City (City). We will grant the petition for exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

According to UP, six shippers used the line proposed for abandonment during 2002, one shipper during 2003, and none in 2004. Specifically, in the year 2002, 672 carloads were handled for the following shippers: Big W Sales – 1 carload; California Tomato Products – 26 carloads; Colusa Tractor (CT) – 5 carloads; Liberty Packing Company (known as Harter Tomato while located at Yuba City, and now closed) – 634 carloads; Mansfield Associates – 1 carload; and Valley Truck and Tractor – 5 carloads. And in the year 2003, 1 carload was handled for CT. Commodities transported over the line consisted of tomato paste, tomato sauce, mixed fruits and vegetables, food sauces, mixed can goods, plastic tanks, combines, and tractors.

UP states that shipper plant relocations off the line and changes in logistical patterns have eliminated rail activity on the line and that there will be no adverse shipper impact as a result of the proposed abandonment. In particular, UP points out that Harter Tomato, the main shipper on the line, has closed its Yuba City area plant. UP indicates that, after abandonment, the closest rail line will be its main line at Marysville, just across the Feather River from Yuba City. UP also indicates that this area is served by several major highways, including north-south routes 70 and 99, and east-west route 20. UP maintains that it is unlikely that new rail-oriented customers would locate along the line since development trends are moving away from the line, and points out that there is no overhead traffic moving over the line. UP has served the above-listed shippers with a copy of the exemption petition, and no one has filed in opposition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the expense of maintaining a line that is no longer used and allowing it to use its assets more productively elsewhere on its system. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. All six shippers on the line have ceased using the line, and no one has filed in opposition to the transaction. Nevertheless, to ensure that the shippers are informed of our action, we will require UP to serve a copy of this decision on each of them within 5 days of the service date of this decision and notice and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition of granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

UP has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on June 18, 2004.

In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker along the rail line that may be affected by the proposed abandonment and has requested 90 days' notification in advance of any activities that may disturb or destroy this station marker. Therefore, SEA recommends that UP be required to consult with NGS and provide NGS with 90 days' notice prior to activities that may disturb or destroy the geodetic station marker located on the line.

SEA also states in the EA that the California Office of Historic Preservation (SHPO) has indicated that unanticipated buried archaeological sites could be located within the area of the proposed abandonment. The SHPO has indicated that the location of buried archaeological resources under the line is possible, because the line passes through the historic center of Yuba City proper and crosses the Feather River, along which former Native American villages are known to have been located. Moreover, the Cultural Resources section of the Sutter County General Plan indicates that Yuba City was actually founded on the site of a tribal Indian village. In light of this information, SEA has contacted the United Auburn Indian Community (UA) pursuant to 36 CFR 800.3(f)(2) to ensure that there are no National Register eligible properties of traditional religious and cultural significance that may be affected by the proposed abandonment. The UA includes descendants from the Nisenan tribe and others with a shared Maidu cultural heritage. Therefore, SEA also recommends that, in the event that UP does discover unanticipated archaeological sites, human remains, funerary items or associated artifacts during salvage operations, UP be required immediately to cease work and notify SEA, the SHPO and any Federally recognized tribe that may have an interest, and consult with them to determine whether any mitigation measures are necessary.

Comments on the EA were due by July 19, 2004. No comments were filed by the due date. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, on June 10, 2004, the City late-filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for imposition of a public use condition under 49 U.S.C. 10905. The May 10, 2004 notice provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 was due by June 1, 2004. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted.

The City has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. By facsimile filed on June 15, 2004, UP states that it is willing to negotiate with the City for interim trail use. Because the City's request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into trail use negotiations, we will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed

below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, following abandonment and salvage of the line, the right-of-way may be suitable for other public use. The City requests imposition of a 180-day public use condition prohibiting UP from: (1) disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels. The City states that the rail corridor will enable it to connect the trail from Marysville and the Feather River to the Sutter County trailhead and will provide a link to two adjoining cities. The City states that the 180-day period is needed to complete negotiations and to secure the funding to purchase the right-of-way.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides 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 City, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that UP shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (except track, ties, and signal equipment) for a period of 180-days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below; (3) consult with NGS and provide NGS with 90 days' notice prior to activities that may disturb or destroy the geodetic station marker located on the line; and (4) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during its salvage activities, UP shall immediately cease all work and notify SEA, interested Federally recognized tribes, and the SHPO, and UP shall then consult with SEA, the SHPO, and interested Federally recognized tribes to determine whether any mitigation measures are necessary.

2. UP is directed to serve a copy of this decision and notice on the line's shippers within 5 days after the service date of this decision and to certify to the Board that it has done so.

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

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 16, 2004, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR

1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective on September 15, 2004. Petitions to stay must be filed by August 23, 2004; petitions to reopen must be filed by August 31, 2004.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP’s filing of a notice of consummation by August 6, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary