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SERVICE DATE – JUNE 20, 2023

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 351X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN WEBER
AND DAVIS COUNTIES, UTAH

Decided: June 20, 2023

On May 2, 2023, Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon service over the portion of the Hill Field Industrial Lead extending from milepost 0.6 to milepost 6.8, a total distance of 6.2 miles, in Weber and Davis Counties, Utah (the Line). Notice of the exemption was served and published in the Federal Register on May 22, 2023 (88 Fed. Reg. 32,814). The exemption is scheduled to become effective on June 21, 2023.

On June 7, 2023, the Utah Department of Transportation (UDOT) requested issuance of a notice of interim trail use or abandonment (NITU) to negotiate with UP to establish interim trail use and rail banking for a portion of the Line, from milepost 0.6 to milepost 4.09, under the National Trails System Act, 16 U.S.C. § 1247(d). On June 9, 2023, UP filed a letter agreeing to negotiate with UDOT toward a possible interim trail use/rail banking arrangement for this portion of the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on May 26, 2023, and solicited public comments. In the Draft EA, OEA stated that UP submitted a historic report as required by the Board's environmental rules at 49 C.F.R. § 1105.8(a) and served the report on the Utah State Historic Preservation Office (SHPO), pursuant to 49 C.F.R. § 1105.8(c). The Draft EA notes that, based on available information, the SHPO submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. OEA concurs with the SHPO's no-adverse effect determination. Accordingly, pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register.

The Draft EA also notes that, pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development Tribal Directory Assessment Tool to identify federally recognized tribes that may have ancestral connections to the project area. Based on the information provided from all sources to date, the Draft EA concluded that, as

currently proposed, abandonment of the Line will not significantly affect the quality of the human environment and recommended no conditions be imposed on any decision granting abandonment authority.

OEA issued a Final EA on June 16, 2023, noting that no comments on the Draft EA were received. No environmental or historic preservation issues have been raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

Interim Trail Use. UDOT's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and UP has notified the Board that it is willing to negotiate with UDOT toward an agreement for interim trail use. Therefore, a NITU will be issued for the portion of the Line between milepost 0.6 and milepost 4.09. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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) & (h). If no agreement is reached within one year, CSXT may fully abandon the portion of the Line from milepost 0.6 to milepost 4.09, subject to any outstanding conditions. See 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.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on May 22, 2023, 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 UDOT to negotiate with UP for trail use for the portion of the Line from milepost 0.6 to milepost 4.09 for a period of one year from the service date of this decision and notice, until June 20, 2024.
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 June 20, 2024, for the above-described portion of the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon that portion of the Line.

9. For the portion of the Line from milepost 4.09 to milepost 6.08, if consummation has not been effected by UP's filing of a notice of consummation by June 20, 2024, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

10. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.