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SERVICE DATE – MAY 7, 2010

BOARD OF SUPERVISORS

2010 MAY 13 A 11: 37

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 278X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN SAN JOAQUIN AND STANISLAUS COUNTIES, CAL.

Decided: May 6, 2010

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 5.18-mile line of railroad known as the McHenry Industrial Lead extending from milepost 21.25 near Escalon to milepost 26.43 near McHenry in San Joaquin and Stanislaus Counties, Cal. Notice of the exemption was served and published in the Federal Register on July 2, 2009 (74 Fed. Reg. 31,790). The exemption became effective on August 1, 2009. In this decision, the Board is granting the request by the City of Modesto, Cal. (the City), to extend the interim trail use/rail banking negotiation period.

By decision and notice of interim trail use or abandonment (NITU) served on July 31, 2009, the proceeding was reopened and a 180-day period was authorized for the City to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).<sup>1</sup> By a decision served on February 4, 2010, the trail use negotiation period under the NITU was extended until April 28, 2010.

By letter dated April 12, 2010, the City submitted a request for an additional 180-day extension of the NITU negotiating period. The City states that, at the present time, the parties have not been able to reach an agreement and would like to continue negotiations. By letter dated April 23, 2010, UP stated that it is willing to continue to negotiate for interim trail use/rail banking with the City and supports the City's request.

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<sup>1</sup> In addition to interim trail use, the NITU also imposed a public use condition that expired on January 28, 2010, and that may not be extended, and 2 environmental conditions. One of the conditions was an historic preservation condition, which was removed by decision served on March 9, 2010. The other environmental condition remains in effect.

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Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from April 28, 2010, until October 25, 2010.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the negotiation period for an additional 180 days is granted.
2. The negotiating period under the NITU is extended to October 25, 2010.
3. This decision is effective on its service date.

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

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<sup>2</sup> See Rail Aban.—Use of Rights-of-Way as Trails—Supp. Trails Act Proc., 4 I.C.C.2d 152, 157-58 (1987).