

SERVICE DATE – OCTOBER 6, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION —IN RED RIVER AND BOWIE COUNTIES, TEX.

Decided: October 5, 2011

By decision served and published in the Federal Register (61 Fed. Reg. 66,748) on December 18, 1996, the Missouri Pacific Railroad Company (MP)¹ was granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a line of railroad extending from milepost 23.0 at New Boston, in Bowie County, Tex., to the end of the track at milepost 61.5 near Clarksville, in Red River County, Tex., a distance of approximately 38.5 miles.² The exemption became effective on January 17, 1997. On December 30, 1996, Rails to Trails Conservancy (RTC) timely filed a request for issuance of a notice of interim trail use (NITU) and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. RTC also acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. On January 3, 1997, UP agreed to the imposition of a trail use condition in this proceeding.

By decision and NITU served on February 14, 1997, a 180-day period was authorized for RTC to negotiate an interim trail use/rail banking agreement with MP for the right-of-way. In a letter filed on July 16, 1997, UP notified the Board that an interim trail use agreement had been reached with RTC and the right-of-way had been conveyed to RTC for use as an interim trail, effective July 3, 1997. The right-of-way between mileposts 23.0 and 42.59 was subsequently conveyed to Bowie County, Tex. (the County) on July 1, 2005.³

¹ MP merged with and into Union Pacific Railroad Company (UP). In this decision, the abandoning railroad will be referred to as either MP or UP.

² In the same decision, the Board also exempted discontinuance of service on the line. See Tex. Ne. Div., Mid-Mich. R.R.—Discontinuance of Service Exemption—In Red River & Bowie Counties, Tex., AB 364 (Sub-No. 3X).

³ In a joint motion filed on June 15, 2005, RTC and the County requested the substitution of the County as interim trail user for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, a distance of approximately 19.59 miles. UP consented to the substitution request and, by decision and NITU served on July 1, 2005, the request was granted.

The County filed a petition on April 10, 2007, to terminate trail use over a 50-foot wide portion of the 100-foot wide railroad right-of-way that it owns. According to the County, it plans to sell that 50-foot wide portion to the Texas Department of Transportation (TxDOT) to allow TxDOT to widen a segment of US Highway 82, which parallels the right-of-way. The Board, on May 16, 2007, directed the County to submit a statement demonstrating that the remaining 50 feet of right-of-way would be adequate to accommodate rail service.

The County filed a supplemental petition on July 14, 2010. That pleading failed to provide any explanation of the adequacy of the narrowed corridor as a right-of-way for potentially reactivated rail service. The Board denied the petition on November 5, 2010.

The County filed a second supplemental petition to terminate trail use over the northernmost 50 feet of the right-of-way on July 27, 2011, between mileposts 25.139 and 34.429. The County engaged an engineering firm, H.W. Lochner, Inc. (Lochner), to provide an evaluation as to whether retaining the southern 50 feet of the 100-foot corridor in that section of the right-of-way would be sufficient to permit the possible reestablishment of rail service. The County submitted a verified statement from John Goodwin, a registered professional engineer employed by Lochner. Mr. Goodwin states that a field evaluation was made of the affected mileage and says that “the study determined that rail service could be reestablished for a rail facility meeting commonly used design criteria” and that “no impediments exist along the route that would not allow for a rail facility to be built in the future.”

On August 11, 2011, UP filed a response to the County’s request. UP states that it concurs with the County’s request. UP states that the portion of the rail corridor scheduled to be sold to TxDOT will not adversely affect nor conflict with UP’s ability to operate the remaining width of the corridor as a rail line, should the need arise.⁴

The County’s petition seeks to terminate interim trail use over the described northernmost 50 feet of the right-of-way by vacating the NITU for that portion. Petitioner also seeks authority to abandon the same 50-foot width of the right-of-way. Because interim trail use will continue on a portion of the right-of-way and the sale of half the width of the right-of-way will not impede the potential restoration of rail service in the corridor, the County need not seek abandonment authority in order to sell the property. Moreover, the County has now demonstrated with adequate specificity that the remaining 50-foot wide right-of-way would be adequate to permit future rail operations.

The County’s petition to modify or vacate the NITU invokes 49 C.F.R. § 1152.29. The provisions in those regulations for vacating NITUs were developed to apply to situations where the length of a railbanked line would be shortened—i.e., where the abandonment would be partly consummated – not where, as here, the right-of-way will be narrowed, but will be adequate for

⁴ On August 1, 2011, The Partnership for the Pathway filed a notice of intent to participate in the proceeding but did not submit comments.

potential future rail service. Given the circumstances presented here, it is unnecessary to modify the NITU. The Board will, however, clarify that the 50 feet of right-of-way transferred to TxDOT to widen US Highway 82 is no longer part of the NITU that the Board imposed in this proceeding.

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

It is ordered:

1. The County's petition is granted as described herein.
2. This decision is effective on its service date.

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