

BOARD OF SUPERVISORS

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SERVICE DATE – MARCH 9, 2010

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SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: March 8, 2010

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 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, CA. Notice of the exemption was served and published in the Federal Register on July 2, 2009 (74 FR 31790). The exemption became effective on August 1, 2009, subject to standard employee protective conditions, and subject to environmental, historic preservation, interim trail use/rail banking (NITU), and public use conditions imposed by a decision served on July 31, 2009 (July 2009 decision).

The July 2009 decision imposed two environmental conditions that had been recommended by the Board's Section of Environmental Analysis (SEA) in an Environmental Assessment (EA) served on July 7, 2009. One of the conditions, an historic preservation condition, required UP to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (Nation Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). The condition also required UP to report back to SEA regarding any consultations with the California Department of Parks and Recreation (State Historic Preservation Office or SHPO) and the public and prohibited UP from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of track and ties) until the section 106 process had been completed and the Board had removed the condition. In this decision, the Board is removing the historic preservation condition.

In a Post EA dated February 26, 2010, SEA advises that, by letter dated February 8,

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<sup>1</sup> A decision served on February 4, 2010, extends the negotiating period under the NITU until April 28, 2010. The public use condition expired on January 28, 2010, and may not be extended. The other environmental condition remains in effect.

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2010, the SHPO submitted comments stating that the proposed abandonment would have no effect on historic properties located within the Area of Potential Effect for the project. SEA states that, pursuant to the section 106 regulations of the NHPA at 36 CFR 800.5(b), and following consultation with the SHPO and the public, it has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA recommends that the section 106 historic preservation condition imposed in the July 2009 decision be removed.

Accordingly, based on SEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This decision 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 section 106 historic preservation condition imposed in the July 2009 decision is removed. The other environmental condition remains in effect.
3. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.