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SERVICE DATE - DECEMBER 14, 2001

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

DOCKET NO. AB-33 (Sub-No. 183)

**Salt Lake City Corporation - Adverse Abandonment of Line of Union Pacific Railroad
Company - In Salt Lake City, Utah**

DESCRIPTION OF THE PROPOSED ACTION

This proceeding involves an application for adverse abandonment¹ filed before the Surface Transportation Board (Board) by Salt Lake City Corporation (the "City") under 49 U.S.C. 10903. Union Pacific Railroad Company (UP) is the owner of the line being proposed for adverse abandonment. The line, known as the 900 South Line, is a portion of the former Passenger Line Industrial Lead. The line is 1.32 miles in length and extends from railroad milepost 781.0 just east of Redwood Road to milepost 782.32, in Salt Lake City, Utah. A map depicting the rail line in relationship to the area served is appended to the report.

In 1906, the 900 South Line was constructed to link a then-new UP passenger depot in downtown Salt Lake City to UP's main line to Los Angeles, CA. In so doing, the line became part of an important freight route and major main line used by passenger, mail and express trains between Salt Lake City and Los Angeles. Over time, the use of the line has changed and diminished. In 1971, passenger service was transferred to the National Railroad Passenger Corporation, which rerouted its service away from the line in the mid-1980s. By the 1990s, many of the on-line shippers had converted to truck transportation or left the area. By then, the only service consisted of a daily local train serving the line's remaining customers and nearby trackage. The line also continued to be used by trains seeking an alternate through-route.

¹An adverse abandonment is a proceeding where a party other than the one who is the owner or operator of the line comes before the Board to request that the Board withdraw its jurisdiction over the line and require or permit abandonment of the line by issuing an abandonment certificate. An abandonment certificate would enable the City to pursue court proceedings regarding the disposition of the line. The Board and its predecessor, the Interstate Commerce Commission, have long held that granting an adverse abandonment application would remove this agency's primary jurisdiction over the line, thereby subjecting the line to actions under state law.

ENVIRONMENTAL REVIEW

The City has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. The City served the environmental and historical reports on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board's) environmental rules [49 CFR 1105.7(b)]. We have reviewed and investigated the record in this proceeding.

The proposed abandonment is consistent with local and existing land use plans. There would be no effects on prime farmland or any state coastal zone management areas. The terrain is essentially level with adjacent land uses of primarily residential (including educational) with some commercial and light industrial. The City believes that the right-of-way would be suitable for alternative public uses such as a rails-to-trails park project or residential use. The property does not contain federally granted rights-of-way. Because the line is located in an urban area, it is unlikely that there would be any impacts on threatened and endangered species.

According to the City, the line segment has not been in use for the last two years. In 1997, UP agreed to cooperate with the City on a project designed to facilitate a major commercial and residential development in the area near the line by rearranging track through the downtown area and the area known as Grant Tower, immediately north of the line. According to UP, it initially planned to abandon the line, but ultimately limited its abandonment filing to a contiguous 0.47 mile segment of the 900 South Line. UP explained that it retained the line so that the line could form part of a freight bypass route between UP's Roper Yard and its main line track to the Los Angeles/Oakland Bay area.

BACKGROUND

Based on available information in this proceeding, the proposed abandonment is not expected to result in any adverse impacts to local communities. Moreover, available information suggests that the proposed abandonment would result in beneficial impacts in the community through which it passes. Specifically, the owner of the line, UP, intends to reactivate service over the line. Thus, potential safety impacts, delay of emergency response, increased noise levels and air quality impacts associated with future reactivation of service would not occur.

In this regard, the City and supporters of the abandonment² have raised community impact issues that relate to UP's decision to reactivate service over the line. UP states that the reactivation will allow, for safety reasons, approximately 8-10 trains per day to be routed away

²Supporters of the abandonment include the Mayor of Salt Lake City and the League of United Latin American Citizens.

from the UP line which is located near the 2002 Olympic event sites in Salt Lake City. UP submitted that the project is primarily being pursued for its long-term transportation benefits, which are reduced transit time and reduced congestion on the UP route through the Grant Tower area.

The City argues that reactivation of service would adversely affect the City's minority community through which the line traverses. Moreover, supporters of the abandonment state that under a Franchise Agreement dated March 20, 1989, the City has the authority to void and terminate UP's rights to use street crossings on the line. The City exercised what it believes to be its right to terminate UP's use of the line and directed UP to remove its tracks at such crossings by November 1, 2001.

In response to the City, UP filed with the Board a petition for Declaratory Order. In the Declaratory Order, UP stated that the City's attempt to void its rights under the Franchise Agreement to use street crossings, and to direct removal of UP's tracks at these crossings, if carried out, would sever the line and prevent rail operations over it. UP argued that, under 49 U.S.C. 10903, the City cannot take any action to sever a line of railroad, or prevent its reactivation, without first obtaining adverse abandonment authority from the Board. In essence, UP argued that the Board has exclusive jurisdiction over the line until abandonment is authorized and exercised and that enforcement of the Franchise Agreement by the City requiring removal of track on the line was preempted under the broad scope of 49 USC 10501(b)³.

In a November 7, 2001 decision, the Board determined that in this case it was not necessary for the Board to institute a declaratory order proceeding, because it is well settled that, without abandonment authority from the Board, a state or local order, regulation or civil enforcement action that would sever a line of railroad or prevent operation over it is precluded. See 49 U.S.C. 10501(b), 10903. Congress gave the Board exclusive and plenary authority over rail line abandonments, and Board authority is required before a railroad line can be lawfully abandoned. Thus, any party seeking the abandonment of a line of railroad, or discontinuance of rail service, must first obtain appropriate authority from the Board.

The Board and the courts have consistently held that such local regulation is precluded. Court and agency precedent addressing the scope of 49 U.S.C. 10501(b) have made it clear that zoning ordinances and local land use permits are preempted and state and local regulation cannot be used to veto or unreasonably interfere with railroad operations. The appropriate procedure for the City to seek removal of the street crossings on the line was to file an application for adverse abandonment.

³In the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (195), Congress broadened the express preemption provision at 49 USC 10501(b), so that both the jurisdiction of the Board over transportation by rail carriers and the remedies provided under or Federal or state law.

SCOPE OF SEA’S ENVIRONMENTAL REVIEW IN THIS CASE

It has clearly been established that reactivation of service over a rail line that has not been abandoned does not require Board approval. See Lee’s Summit, MO v. STB, 31 F.3d 39, 42-43 at n.3 (D.C. Cir. 2000); Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314, 1316-17 (D.C. Cir 1995); Union Pacific Railroad Company - Petition for Declaratory Order - Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX, STB Finance Docket No. 33611 (STB served Aug. 21, 1998). Consequently, there is “no major Federal action” triggering environmental review under the National Environmental Policy Act, 42 U.S.C. 4332(2)(C). This EA, therefore, analyzes the potential environmental impacts associated with abandonment of UP’s rail line (discontinuance of rail operations and salvage of the rail line). It does not assess the potential environmental impacts associated with reactivation of UP’s rail line.

ENVIRONMENTAL JUSTICE

Executive Order (EO) 12898,⁴ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, directs Federal agencies to “promote nondiscrimination in Federal programs substantially affecting human health and the environment and provide minority and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.” EO 12898 also directs agencies to use existing law to ensure that when they act,

- they do not discriminate on the basis of race, color, or national origin;
- they identify and consider disproportionately high and adverse human health or environmental effects of their action on minority and low-income communities; and
- they provide opportunities of community input in the National Environmental Policy Act of 1969 process, including input on potential effect and mitigation measures.

As stated above, the area of impact for the proposed abandonment of the 900 South Line is a 1.32 mile line located in the vicinity of downtown Salt Lake City. The line is located in a minority community composed of residential neighborhoods including schools, parks and single-family homes. The line runs directly east of an elementary school and directly through the residential neighborhood of a minority community.

Several parties in this proceeding filed information in support of the application alleging issues of “environmental racism” in an environmental justice community. Under the

⁴The Board, as an independent regulatory agency, is not decisionally part of the executive branch of the Federal government. As an independent regulatory agency, the Board is not legally bound by Executive Orders, nevertheless, the Board makes every effort to comply with the intent of applicable EO for projects subject to its authority.

circumstances, SEA assessed the potential impacts of the proposed abandonment⁵ to determine if it could result in disproportionately high or adverse impacts on minority or low-income communities. Based on available information, SEA determined that the proposed abandonment does not warrant an Environmental Justice analysis because abandonment (defined here as discontinuance of service over a dormant line and authority to dismantle the tracks) would not adversely affect the community. Rather, SEA believes that abandonment of this segment could have a beneficial impact in the areas of noise and safety by removing the rail line from the community.

HISTORIC

According to the City, there is one timber pile trestle open deck bridge which was constructed in 1931 located at Milepost 781.81. The Utah State Historical Society (Utah SHPO) has advised us that the bridge appears to meet the basic eligibility criteria for listing in the National Register of Historic Places. Normally, SEA would recommend a condition which requires the owner to address this concern and require that interest be retained in and no steps taken to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. However, because this is an adverse abandonment brought before the Board by the City, no such condition can be imposed on UP at this time. Furthermore, as the City does not currently have an interest in the right-of-way, no such condition can be imposed on the City. The National Geodetic Survey has also advised SEA that two geodetic station markers have been identified that may be affected by the proposed abandonment.

CONDITIONS

We recommend that no environmental conditions be placed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and, therefore, no change in operations), discontinuance of service without abandonment and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

⁵Although parties to the proceeding believe that the Board should look at the impacts of reactivation of the rail line as part of its environmental justice analysis, as discussed earlier, the Board is limited to applying the environmental justice criteria in this proceeding only to abandonment-related activities (discontinuance and salvage).

PUBLIC USE

If abandonment and salvage of the rail line does take place, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Surface Transportation Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Surface Transportation Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. However, the Board will accept late-filed requests as long as it retains jurisdiction to do so. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592 or mail inquiries to the Surface Transportation Board, Office of Public Services, Washington, DC 20423.

ENVIRONMENTAL COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Washington, DC 20423, to the attention of Kenneth Blodgett, who prepared this environmental assessment. **Please refer to Docket No. AB-33 (Sub No. 183) in all correspondence addressed to the Board. If you have questions regarding this environmental assessment, you should contact Kenneth Blodgett by phone at (202) 565-1554, fax at (202) 565-9000, or e-mail at blodgettk@stb.dot.gov.**

Recent events involving a principal postal facility within Washington, D.C. may affect for a period of time the receipt of materials mailed to the Board, as well as customer receipt of reply mail sent from the Board. Until the timely delivery of mail has been reestablished, the Section of Environmental Analysis (SEA) requests that individuals filing comments regarding this or other environmental assessments take the following additional steps to ensure receipt of their correspondence during the comment period:

1. Telephone or e-mail the environmental contact indicated above prior to the close of the comment period and inform them that you have mailed a comment.
2. If the comment has not been received, the environmental contact will discuss alternative modes of delivery.

3. Retain a copy of your comment for your records should alternative modes of delivery be necessary.

SEA is committed to carrying out its duties to the public and regrets any inconvenience these new procedures may cause.

Date made available to the public: December 14, 2001.

Comment due date: **January 14, 2002 (30 days).**

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

MAP TO BE SCANNED