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SERVICE DATE – LATE RELEASE JUNE 6, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-398 (Sub-No. 7X)

SAN JOAQUIN VALLEY RAILROAD COMPANY
–ABANDONMENT EXEMPTION–
IN TULARE COUNTY, CA

Decided: June 6, 2008

By petition filed on February 19, 2008, the San Joaquin Valley Railroad Company (SJVR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 30.57-mile portion of the South Exeter Branch between milepost 268.60 at Strathmore and milepost 299.17 at Jovista in Tulare County, CA.[1] Notice of the filing was served and published in the Federal Register on March 10, 2008 (73 FR 12796).

On March 31, 2008, a protest was jointly filed by the Tulare County Economic Development Corporation and the Tulare County Association of Governments (TCAG) (jointly, the County).[2] The Tulare County Board of Supervisors (Tulare Board) filed a letter on April 3, 2008, joining the County's protest. TCAG also requested issuance of a notice of interim trail use (NITU). On April 10, 2008, SJVR filed a rebuttal along with a motion for leave to file a rebuttal. The County responded on April 30, 2008. We will accept these supplemental filings in the interest of a more complete record.

SJVR contends that there is insufficient traffic available to justify the costs of maintaining and operating the line, and that investing capital in the line would not be a prudent use of carrier resources. According to SJVR, abandonment will permit the carrier to rationalize its system, avoid rehabilitation and maintenance costs, and dispose of the line. In support of its

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[1] On February 28, 2008, SJVR filed a petition for exemption in STB Docket No. AB-398 (Sub-No. 8X) to abandon an adjoining 9.20-mile portion of the South Exeter Branch located north of the subject line between milepost 259.40 near Exeter, CA, and milepost 268.60 at Strathmore. Notice instituting that proceeding was served and published in the Federal Register on March 19, 2008 (73 FR 14874). In a decision being served concurrently with this decision, we are denying SJVR's petition for exemption in STB Docket No. 398 (Sub-No. 8X).

[2] The County's protest includes letters from Sierra Forest Products (Sierra), Britz Fertilizers, Inc. (Britz), Tuff Stuff Products, Inc. (Tuff Stuff), and resolutions by the Tulare County Association of Governments, Tulare County Board of Supervisors, Tulare City Council, and the Visalia City Council opposing the proposed abandonment.

petition, SJVR has submitted verified statements from the Director of Finance of RailAmerica, Inc. (RailAmerica),[3] discussing SJVR's revenues and costs from operating the line, and the Chief Engineer of RailAmerica,[4] discussing the value of the track and materials on the line, the cost to rehabilitate the line, and the cost to maintain the line once it is rehabilitated.

We will grant the petition for exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

SJVR became a rail carrier in 1992 when it consummated an agency-authorized transaction to lease and operate 354.70 miles of rail lines in Fresno, Tulare, Kern and Kings Counties, CA, owned by the Southern Pacific Transportation Company (SPT) and Visalia Electric Railroad Company (VE), and to assume trackage rights over a number of other rail lines owned exclusively by SPT or jointly by SPT and The Atchison, Topeka and Santa Fe Railway Company.[5] Subsequently, SJVR purchased 206.77 miles of track and rail assets that it had previously leased, and SJVR leased the land underlying the right-of-way from SPT.[6] SPT's successor, the Union Pacific Railroad Company (UP), has continued to own the underlying real estate.

TRAFFIC AND REVENUES

According to SJVR, it has served three shippers located on the line since 2004: Tri K Truss (Tri K), Sierra, and Britz. Tri K received 36 carloads in 2004, 33 carloads in 2005, and 9 carloads in 2006. Sierra received 37 carloads in 2004, 8 carloads in 2005, and 3 carloads in 2006. Britz received 8 carloads in 2004, 11 carloads in 2005, and 20 carloads in 2006. No traffic has moved over the line since October 2006. According to SJVR, the annual revenues generated by these shippers totaled $30,582 in 2004, $27,294 in 2005 and $12,300 in 2006. SJVR calculates forecast year traffic based on 2006 data showing 32 carloads handled and $12,300 in attributable revenues. No one has challenged this revenue estimate.[7]

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[3] Robert M. Frelich, Jr.

[4] Mark D. Garvin.

[5] See San Joaquin Valley Railroad Co.–Lease and Operation Exemption–Southern Pacific Transportation Company and Visalia Electric Railroad Company, Finance Docket No. 31993 (ICC served Jan. 23, 1992).

[6] See San Joaquin Valley Railroad, Co.–Acquisition and Lease Exemption–Southern Pacific Transportation Company, Finance Docket No. 31993 (Sub-No. 1) (ICC served Oct. 4, 1993).

[7] As discussed below, the County has questioned whether revenues derived from the storage of rail cars for another railroad should be included in analyzing the profitability of the line.

OPERATING COSTS

RailAmerica's Director of Finance calculates forecast year costs as totaling $117,793. According to the Director of Finance, the costs consist of $10,151[8] for annual operating expenses, which he calculates, and $107,642 for maintenance of way costs, which RailAmerica's Chief Engineer calculates. The maintenance of way costs developed by the Chief Engineer consist of vegetation control, crossing maintenance, and track inspection and maintenance.

The County questions the daily expense for the locomotive used on the line. The Director of Finance reports a daily rental of $114 per day. According to the County, this is the same amount as reported in STB Docket No. AB-398 (Sub-No. 8X). The County suggests that SJVR may have double counted the daily expense for locomotive rental, noting that this line and the other segment of the South Exeter Branch proposed for abandonment in STB Docket No. AB-398 (Sub-No. 8X) are typically operated by one crew serving both segments. The County asserts that these costs are inflated, but submits no support for this assertion. On the other hand, RailAmerica's Director of Finance has indicated that locomotive rental is based on total hours operated on the subject line and has provided calculations to support this cost. We will accept SJVR's locomotive rental as part of the forecast year operating costs.

Our analysis of SJVR's data has determined that the Director of Finance's calculation of locomotive fuel cost omitted a necessary variable. He multiplied the cost per gallon times the total hours spent serving the line, but he failed to include the amount of gallons per hour. Including the variable of 7.8 gallons per hour noted in the application would increase the locomotive fuel cost to $6,176, increasing the annual operating cost on the line to $15,536. No one has challenged any other operating costs estimated by SJVR. With this adjustment, the total avoidable costs for the forecast year total $123,178.

SUMMARY OF OPERATING COSTS AND REVENUES

As indicated, SJVR's estimated costs and revenues show that the carrier will incur an avoidable loss of $110,878 from operations in the forecast year. Except as noted, these estimates are unchallenged and appear reasonable, and we will accept them.[9]

OPPORTUNITY COSTS

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations–Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the

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[8] SJVR's petition indicates that operating costs for the forecast year total $10,223. However, the Director's (Mr. Frelich) statement at p.87 reports that the forecast year avoidable costs total $10,151.

[9] See Exhibit-1 attached to this decision.

net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return, to yield the nominal return on value. Under 49 CFR 1152.34(d), the rate of return used to calculate return on value represents the individual railroad's current pre-tax nominal cost of capital. Our most recent after-tax cost of capital finding for the railroad industry is used as a basis for developing the appropriate nominal rate of return. The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for one additional year.

SJVR estimates that it would incur opportunity costs of $175,072 if it were to continue operating the line. No party has challenged that estimate. SJVR's estimate is based on RailAmerica's Chief Engineer's estimate of the net salvage value of the line in the amount of $995,574, consisting of the value of the rail and track materials less the cost of their removal and transportation. Because UP owns the underlying real estate, SJVR has not included any real estate value in its estimate and SJVR has not included any income tax benefits that would result from abandonment. SJVR has estimated the working capital requirement at $4,843, has not included a holding gain or loss due to the current volatility in the market for scrap and reusable steel, and has applied a nominal rate of return of 17.50% in calculating its opportunity costs. As we noted previously, we have adjusted the forecast year operating cost to $15,536. Using this adjusted operating cost results in an increase in working capital to $5,062. In addition, we have adjusted the nominal rate of return to reflect our most recent cost of capital determination in Railroad Cost of Capital – 2006, STB Ex Parte No. 558 (Sub No. 10) (STB served Apr. 15, 2008). Applying the properly adjusted nominal rate of return of 14.98% to the investment base, including our adjustment for working capital discussed above, yields an opportunity cost of $149,895. SJVR's estimate for opportunity costs, with our adjustments, as just discussed, appears reasonable, and we will adopt that adjusted estimate.[10]

REHABILITATION

SJVR asserts that it would have to incur substantial expenses to rehabilitate the line if it continued to provide service on the line. RailAmerica's Chief Engineer testifies that the line is currently in Federal Railroad Administration (FRA) excepted condition.[11] SJVR states it has maintained the line to carry the small amount of traffic tendered to it. The Chief Engineer estimates that to return the excepted portions of the line to FRA Class 1 condition would require capital expenditures of $1,327,920, consisting of $69,200 for bridge work, $1,071,723 for ties, and $186,997 for resurfacing.[12] No one has challenged these estimates with specific evidence. Given the evidence submitted and the lack of specific challenges, we will accept SJVR's rehabilitation estimate.

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[10] See attached Exhibit-1.

[11] See 49 CFR 213.9.

[12] V.S. of Mr. Garvin at 77.

LOCAL COMMUNITY AND SHIPPER INTEREST

The County opposes the proposal, arguing that SJVR's petition fails to provide sufficient information to permit the Board to adequately assess the future financial viability of the line. The County also criticizes SJVR for failing to adequately address the impact of the loss of rail service on air quality, given the County's nonattainment status. SJVR responds that it has fully substantiated the costs of continued operation of the line, showing that the line currently is not financially viable and will not be financially viable in the future. As for potential environmental harm, SJVR points out that there will be no diversion of current rail traffic to truck (because there is no current rail traffic) and that the 2004 traffic level of 81 rail carloads would result in diversions to trucks well below the Board's threshold for nonattainment areas.

The County expresses concern that it cannot develop economically without rail service. It notes that many industrial sites located along the line are available for potential rail users, and that new and existing businesses, which have used rail service in the past, have indicated a desire to use rail service if provided. The County points out that potential shippers were discouraged when SJVR imposed a $900 per car surcharge in June 2000. The surcharge was lifted in 2002 for some portions of the line, but a $950 per car surcharge was imposed in April 2006 that allegedly discouraged all rail business development. It points to letters from Sierra and Britz stating that those companies would use rail service if the surcharge was lifted. In its letter, Tuff Stuff indicates that it moved to its location in August 2007 and expects to be in operation by September 2008. Tuff Stuff cites the need for competitive rail service and objects to the surcharge.

SJVR responds that it deferred maintenance on the line for years to keep rates low and attract business. SJVR points out that traffic dropped to 81 carloads in 2004, generating $30,582 in revenues, and continued to drop to 52 carloads in 2005, to 32 carloads in 2006, to no traffic in 2007 or 2008 to date. SJVR emphasizes that the $30,582 in revenues in 2004 failed to cover even the annual maintenance of the line of $107,642, and that it subsequently imposed the surcharge in 2006 to try to generate the revenue necessary to cover the costs of the line.[13] SJVR points out that both Sierra and Britz continue to refuse to pay the surcharge and are using transportation alternatives and that Tuff Stuff located on the line in August 2007, when the surcharge was in effect. SJVR notes that none of the shippers has committed to a volume of traffic to warrant continued rail service. SJVR points out that adequate transportation alternatives exist, as California Highway 65 runs parallel to the line for almost its entire length and shippers have been using alternatives to its rail service on the line.

The County suggests that SJVR could have realized additional revenues from other sources. According to the County, SJVR could have bifurcated the proposed abandonment by abandoning the portion of the line south of milepost 287.10, where no shippers are located, and by using funds realized from salvage of that portion to rehabilitate the remainder of the line. The

[13] Using 2004 as an example, the revenue generated if the $950 per car surcharge had been in place and paid, SJVR would have realized some $107,582, still short of covering all of SJVR's costs.

County asserts that SJVR also arbitrarily established the beginning of the abandonment at milepost 268.60 instead of milepost 264.10, where the last shipper is located on SJVR's connecting line, thereby improperly excluding consideration in this proceeding of revenues derived from storing boxcars for UP on the line between those mileposts.[14] Finally, the County indicates that SJVR could have reduced crossing signal expenses by eliminating automatic crossing signals.

In response to the County's suggestion regarding salvaging the southern portion of the line and using the funds to rehabilitate the northern portion, SJVR points out that the County has failed to consider that SJVR would first have to repay debt from the proceeds for any salvaged track and material. SJVR further notes that, regardless of the amount available, past traffic volume suggests that such an investment would not be economically justified. As for boxcar storage, SJVR indicates that, because the cars were not stored on the subject line, the storage fees it derived did not constitute revenue attributable to the line. SJVR further notes that storage of the boxcars was temporary, and that UP recalled the boxcars from storage, so that SJVR could not properly have included the revenue derived from storage in the forecast year. Further, SJVR indicates that eliminating crossing signals would have required that it get approval from FRA to remove the signals, incurring another cost and raising safety implications.

The County also states that the San Joaquin Valley Air Pollution Control District (District), together with nearby cities and other governmental agencies, have expended $14.2 million to finance rail line repairs to other rail lines and could be a funding source to upgrade the subject line. SJVR, however, notes that the District has not committed funds to the line nor has SJVR applied for such funds. According to SJVR, traffic levels do not warrant government investment in the line.

The County asserts that the map submitted by SJVR does not depict a spur line between Ducor and Ultra that connects with SJVR's line at milepost 287.10. Apparently, Britz is located on the Ultra spur. The County questions whether SJVR included costs for service on the Ultra spur and whether SJVR included the spur in its valuation of the line. SJVR responds that the spur is owned by the Tulare Valley Railroad Company (TVR),[15] that TVR has not operated over the line since 2006, and that TVR has not opposed the abandonment of the line. Apparently, SJVR has been providing rail service on TVR lines under a contract,[16] which terminated in 2006.[17]

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[14] We note that parties have argued for the inclusion of these storage revenues in SJVR's revenue estimates for the line proposed for abandonment in STB Docket No. AB-398 (Sub-No. 8X), as well. We have denied the petition for exemption in that proceeding, in part due to questions regarding the storage revenues, which were properly considered in that proceeding.

[15] See Tulare Valley Railroad Company–Acquisition and Operation Exemption–The Atchison, Topeka & Santa Fe Railway Company, Finance Docket No. 32215 (ICC served Jan. 13, 1993).

[16] See Tulare Valley Railroad Company–Acquisition and Operation Exemption–The Atchison, Topeka & Santa Fe Railway Company, Finance Docket No. 32215 (ICC served July 12, 1993).

Under these circumstances, we agree that the Ultra spur was not required to have been shown on SJVR's map. However, SJVR has properly included revenues generated by Britz and the costs it incurred to serve Britz, which are based on the mileage SJVR operated on its own line to reach milepost 287.10. SJVR's costs do not include the Ultra spur, and SJVR's valuation data do not include the Ultra spur trackage.

Finally, the County states that it intends to make an offer of financial assistance (OFA) under 49 U.S.C. 10904 to acquire the line but that SJVR has not provided sufficient information in its petition to enable it to make an offer. SJVR points out in its rebuttal that the County may request that SJVR provide that information pursuant to 49 CFR 1152.27(a) under the OFA process. Given the County's apparent interest in purchasing only a portion of the line, SJVR also has provided in its rebuttal a detailed estimate of $802,612 for the NLV of track and materials for the segment between milepost 268.60[18] and milepost 287.10 and an estimate of $344,992 for track and materials for the segment between milepost 287.10 and milepost 299.17. SJVR has not included the value of real estate because the underlying property is owned by UP.

The County notes that the petition does not include any details about UP's interest in the right-of-way other than saying that UP owns the real estate.[19] It questions whether UP may have retained any common carrier obligation to resume service if SJVR abandons the line.[20] Noting that SJVR's rebuttal indicates that UP must be compensated for its property if an OFA is filed to acquire the line for continued rail service, the County questions whether any rights UP retained could preclude an OFA or request for interim trail use. We need not address these matters at this time, however. Should an OFA be filed, we would consider the forced sale of SJVR's interest in the line. Any questions about compensation owed to UP may be addressed during the OFA process. Similarly, the impact on trail use may be addressed during the trail use negotiation period should the County not acquire the line through the OFA process.

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[17] See Tulare Valley Railroad Company–Feeder Line Acquisition–a Line of the San Joaquin Valley Railroad, STB Finance Docket No. 35038 (STB served June 19, 2007).

[18] The attachment to SJVR's filing identifies the beginning milepost as milepost 264.10. That portion of SJVR's line is included in its petition pending in STB Docket No. 398 (Sub-No. 8X). Any discrepancy can be worked out in the OFA process.

[19] We note that SJVR does not report incurring any cost showing payments made to UP for using the right-of-way.

[20] We note that a decision of the Board's predecessor, the Interstate Commerce Commission (ICC), in Southern Pacific Transportation Company–Abandonment Exemption–In Fresno County, CA, Docket No. AB-12 (Sub-No. 179X), et al. (ICC served May 8, 1995), involving another line that SJVR acquired from SPT in the transaction that was authorized by the ICC in Finance Docket No. 31993 (Sub-No. 1), see supra note 6,determined that SPT did not retain a common carrier obligation over the line. The ICC's reasoning in that decision would appear to apply equally here.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Based on the revenue and cost evidence submitted, SJVR will incur an avoidable loss from operations of $110,878 in the forecast year. In addition, the record indicates that SJVR will have opportunity costs of $149,895, and will be subject to rehabilitation costs of $1,327,920, if SJVR must continue operating the line. Moreover, no traffic has moved over the line since October 2006, and there is no credible evidence in the record showing that shippers have made a commitment to resume rail shipments to the extent necessary to warrant requiring SJVR to continue to provide rail service over this line. And the County has failed to show that the questioned storage revenues are properly considered in this proceeding, especially given that we have considered them in our decision denying SJVR's petition in STB Docket No. AB-398 (Sub-No. 8X).

SJVR has imposed a surcharge in an attempt to generate the revenue necessary to cover its costs associated with the line, and no one has challenged the lawfulness of the surcharge.[21] The letters from Sierra and Britz indicate that these shippers have decided that SJVR's rail service over the line was not valuable enough for them to pay SJVR sufficient revenue to cover those costs. And Tuff Stuff has chosen to locate on the line with the surcharge in place, but opposes the surcharge. Even with the surcharge, SJVR states that the revenues it would have realized would not have covered the cost of maintenance and the cost of operations at the pre-surcharge traffic level in 2004.[22]

Contrary to the County's position, the record contains ample information to assess the future financial viability of the line as set forth above. Also, the County's arguments regarding the potential for additional revenues and funds for the line are unpersuasive. The selection of the

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[21] As pointed out by SJVR, the Board has granted abandonment exemptions when a surcharge was imposed and shippers stopped using rail service. <u>See</u> <u>Mississippi Tennessee Holdings, LLC–Abandonment Exemption–in Union, Pontotoc and Chickasaw Counties, MS</u>, STB Docket No. AB-868X, <u>et</u> <u>al.</u> (STB served July 26, 2004); <u>Dakota Rail, Inc.–Abandonment Exemption–in McLeod, Carver and Hennepin Counties, MN</u>, STB Docket No. AB-472 (Sub-No. 1X) (STB served Nov. 30, 2001); <u>Central Kansas Railway, L.L.C.–Abandonment Exemption–in Reno, Kingman, Harper, Rice and McPherson Counties, KS</u>, STB Docket No. AB-406 (Sub-No. 13X) (STB served Aug. 14, 2001); <u>Florida Midland Railroad Company–Abandonment Exemption–in Sumter and Lake Counties, FL</u>, STB Docket No. AB-325 (Sub-No. 2X) (STB served Feb. 23, 2001); and <u>Idaho Northern & Pacific Railroad Company–Abandonment Exemption–in Wallowa and Union Counties, OR</u>, Docket No. AB-433X (STB served Mar. 12, 1997).

[22] SJVR's rebuttal at 7, n.10.

end points for SJVR's abandonment request involve the end of the line to the south and Strathmore to the north, which appears to be the northernmost town subject to the 2006 surcharge cited by the County in Attachment 3 to its protest. As such, these appear to be logical termini.[23] And, while we understand the concerns of the County regarding the impact of the loss of rail service on future economic development, the potential, speculative harm to the County arising from abandonment does not outweigh the concrete, demonstrated harm to SJVR resulting from requiring continued rail service over the line.

Based on our analysis as explained in this decision, the record shows that continued operation of the line will impose a substantial economic burden on SJVR and on interstate commerce. Accordingly, we conclude that continued operation of the line is not warranted.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption also will foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary rail line from SJVR's system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No traffic has moved over the line since October 2006. As SJVR notes, the line runs parallel to California Highway 65 for almost its entire length, and that motor carriage is available. Nevertheless, to ensure that shippers are aware of our action, we will require SJVR to serve a copy of this decision on each shipper on the line within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

LABOR ISSUES

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

ENVIRONMENTAL ISSUES

SJVR has submitted an environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the

[23] SJVR made its filing in STB Docket No. 398 (Sub-No. 8X) involving a connecting line segment only days after making its filing in this proceeding without any explanation. No one, however, has demonstrated on this record that SJVR has engaged in improper segmentation in its filings.

environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on April 18, 2008, requesting comments by May 19, 2008.

Addressing concerns raised by the County about the impact on air quality from the abandonment proposal due to increased truck traffic, the EA determined that the increased truck traffic that would be generated would not exceed the Board's thresholds of an increase of more than 10% of the average daily truck traffic (ADT) or 50 vehicles a day on any affected road segment. See 49 CFR 1105.7(e)(5)(C). SEA based its analysis on the 32 carloads that moved in 2006 and noted that no rail traffic had moved over the line since then. The EA concluded that the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

In the EA, SEA stated that the California Public Utilities Commission (PUC) submitted comments requesting that the Board require SJVR to remove the rail and ties along the right-of-way and at all highway-rail crossings along the line within 2 years of granting the abandonment exemption. PUC also requested that a "tracks out of service" sign be posted at crossings until the tracks are removed from the roadways, and that warning devices also be removed along with the tracks within 2 years of granting the abandonment exemption. SEA also stated, that, according to PUC, tracks left in the roadway and not maintained cause traffic and pedestrian safety hazards, and local agencies should not be left financially accountable for removal or maintenance of the crossings. To address these concerns, SEA recommended that SJVR be required to consult with PUC prior to conducting any salvage activities along this line.

SEA also stated that it had not heard from the California Office of Historic Preservation (SHPO) and, therefore, had not been able to consider the SHPO's opinion before determining if the rail line may be eligible for listing in the National Register of Historic Places (National Register). Accordingly, SEA recommended that SJVR be required 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 ROW (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA also has recommended that SJVR be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and that SJVR not be allowed to file its consummation notice or initiate salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due on May 19, 2008. SEA has received one comment, which was filed by TCAG. SEA concludes that no new environmental conditions are warranted.

Regarding TCAG's position that the EA should address the impacts of the proposed abandonment on the Ultra spur, SEA points out that the spur is not part of SJVR's line proposed for abandonment and, if the track is subject to the Board's abandonment jurisdiction, the environmental impacts of the abandonment of the spur track are properly addressed in the environmental review conducted at the time of its abandonment. TCAG also argues that SEA should have examined rail traffic information prior to SJVR's imposition of surcharges on the line in determining whether Board thresholds for rail to truck conversions would be exceeded due to the proposed abandonment. SEA states that it uses recent rail traffic information in making those calculations, because that information most accurately reflects the current conditions and the environmental impacts of the pending abandonment proposal. Finally, regarding TCAG's suggestion that SEA's proposed condition 2 be changed from requiring SJVR to consult with PUC to requiring SJVR to abide by PUC's determinations, SEA observes that this change is unnecessary as SJVR will address PUC's concerns during the course of consultation and will comply with PUC's reasonable requests.

Accordingly, the conditions recommended by SEA in the EA will be imposed. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905.[24] In its protest, TCAG had indicated that it intended to file a request for a public use condition, but TCAG has not submitted the information required by the Board's procedures at 49 CFR 1152.28(a)(2). No other request for a public use condition has been received. Accordingly, no public use condition will be imposed.

TRAIL USE

As previously noted, TCAG has requested the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29 in order to negotiate with SJVR for rail banking and interim trail use of the right-of-way. TCAG has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service, as required under 49 CFR 1152.29. By letter dated April 14, 2008, SJVR states that it is willing to negotiate with TCAG for interim trail use. Because TCAG's request complies with the requirements of 49 CFR 1152.29, and SJVR is willing to enter into negotiations, we will issue a NITU for the line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, SJVR may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), OFAs to acquire rail lines for continued rail service take priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In

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[24] Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by March 31, 2008.

addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA process does not occur, the trail use process may proceed.

It is ordered:

1. The supplemental filings by SJVR and the County are accepted into the record.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by SJVR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that SJVR shall: (1) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, structures, and objects within the right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed, report back to SEA regarding any consultations with the SHPO, any other section 106 consulting parties identified, and the public, and not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition; (2) prior to conducting any salvage activities along this rail line, consult with PUC regarding its concerns that abandoned track could cause safety hazards on roadways; and (3) comply with the interim trail use/rail banking procedures set forth below.

3. SJVR is directed to serve a copy of this decision and notice on Tri K, Sierra and Britz within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by December 3, 2008, interim trail use may be implemented. If no trail use agreement is reached by that time, SJVR may fully abandon the line, provided the conditions imposed above are met.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by SJVR and the Board by June 16, 2008, subject to time extensions authorized under

49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at $1,300. See 49 CFR 1002.2(f)(25).

9. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

10. Provided no OFA has been received, this exemption will be effective on July 6, 2008. Petitions to stay must be filed by June 23, 2008, and petitions to reopen must be filed by July 1, 2008.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), SJVR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SJVR's filing of a notice of consummation by June 6, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

EXHIBIT-1

Docket No. AB-398 (Sub No. 7X)	STB revised forecast year operations
Revenues attributable for:	
1. Freight originated and/or terminated on branch	
2. Bridge Traffic	
3. All other revenue and income	
4. Total revenues attributable (lines 1 through 3)	12,300
Avoidable costs for:	
5. On-branch costs (lines 5a through 5k)	123,178
a. Maintenance of way and structures	107,642
b. Maintenance of equipment	
c. Transportation	15,536
d. General administrative	
e. Deadheading, taxi, and hotel	
f. Overehead Movement	
g. Freight car costs (other than return on freight cars)	
h. Return on value-locomotives	
i. Return on value-freight cars	
j. Revenue taxes	
k. Property taxes	
6. Off-branch costs	0
a. Off-branch costs (other than return on freight cars	
b. Return on value-freight cars	
7. Total avoidable costs(line 5 plus line 6)	123,178
Subsidization costs for:	
8. Rehabilitation *	1,327,920
9. Administration costs (subsidy year only) **	
10. Casualty reserve account	
11. Total subsidization costs (lines 8 through 10)	1,327,920
Return on value:	
12. Valuation of property (lines 12a through 12c)	1,000,636
a. Working capital	5,062
b. Income tax consequences	0
c. Net liquidation value	995,574
13. Nominal rate of return	0.1498
14. Nominal return on value (line 12 time line 13) ***	149,895
15. Holding gain (loss)	0
16. Total return on value (line 14 minus line 15)	149,895
17. Avoidable loss from operations (line 4 minus line 7)	(110,878)
18. Estimated forecast year loss from operations (line 4 minus lines	(260,773)
7 and 16)	
19. Estimated subsidy (line 4 minus 7,11, and 16)	(1,588,693)

* This projection shall be computed in accordance with § 1152.32(m).

** Omit in applications pursuant to §1152.22.

*** If a negative for the "forecast year operations" insert "0" in this line.