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General Attorney

July 11, 2016

241087

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 11, 2016
Part of
Public Record

RE: STB Docket No. AB-33 (Sub-No. 326X)

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") has received a request from the City of Alameda ("City") dated June 30, 2016 seeking interim trail use under the provisions of 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 regarding a segment of Union Pacific's right-of-way known as the Alameda Industrial Lead (MP 10 to 10.4) that is the subject of the above-captioned proceeding. The City also seeks a public use condition pursuant to 49 U.S.C. 10904 and 49 C.F.R. 1152.28 regarding the Alameda Industrial Lead and another segment of track that is the subject of the above-captioned proceeding referred to as "track 7."

Union Pacific is willing to negotiate with the City concerning the acquisition of these two segments for trail use or public use and does not object to the City's request for the standard 180-day negotiation period.

The City's request also raised a jurisdictional question concerning the five segments for which Union Pacific is seeking abandonment authority. According to the City, only one of the five segments, the Alameda Industrial Lead (MP 10 to 10.4), is within the Board's jurisdiction. The City argues that the other four segments were severed from the interstate rail network and are therefore outside the Board's jurisdiction. The City is correct that four of the five segments, all except the Alameda Industrial Lead (MP 10 to 10.4), have been physically severed from the interstate rail network. The four segments were physically severed from the interstate rail network when the City (d/b/a Alameda Beltline Railroad) abandoned its rail line that connected to the Alameda Industrial Lead (MP 10 to 10.4) in 2012. *See City of Alameda d/b/a Alameda Belt Line Railroad—Aban. Exemption—in Alameda Cty, Cal.*, AB 1090. The four segments were not irrevocably severed from the interstate rail because the portion of this rail line that connected the four segments to the Alameda Industrial Lead (MP 10 to 10.4) is currently under interim trail use/rail banking and is subject to possible future reconstruction and reactivation. *See Decision served in AB 1090 on July 20, 2012.*

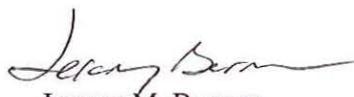
As stated in the Combined Environmental Historic Report, filed on March 23, 2016, Union Pacific views all five segments as potentially falling within the Board's jurisdiction. Under Board precedent a line of railroad can only be abandoned pursuant to Board authority. *Honey Creek Railroad, Inc.—Petition for Declaratory Order*, FD 34869, slip op. at 6 (STB served June 4, 2008). The Board has also exercised its abandonment authority over "islands" of track that have been severed from the interstate rail network. *See BNSF Railway—Aban. Exemption—in Kane County, Ill.*, AB 6 (Sub-No. 489X) (STB served July 28, 2015). In this proceeding, Union Pacific is seeking to abandon all of its remaining



trackage on Alameda Island. Under Board precedent, Union Pacific is therefore seeking abandonment authority over all five segments.

A copy of this letter has been served on counsel for the City, Charles Montange, by First Class Mail and by email.

Sincerely,



Jeremy M. Berman

cc: Charles A. Montange, Esq. (counsel for the City of Alameda)