



KAPLAN KIRSCH ROCKWELL

233695

233696

January 18, 2013

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceeding
January 18, 2013
Part of Public
Record

Re: *Union Pacific Railroad Company – Discontinuance and Abandonment of Freight Easement – In Alameda County, CA (San Jose Industrial Lead)*
STB Docket No. AB-33 (Sub-No. 309X)

Santa Clara Valley Transportation Authority – Abandonment of Residual Common Carrier Service – In Alameda County, CA (San Jose Industrial Lead)
STB Docket No. AB-980 (Sub-No. 2X)

Dear Ms. Brown:

The Santa Clara Valley Transportation Authority respectfully submits the attached Motion for Expedited Consideration of Joint Petition for Exempt Abandonment and Exemption from Offers of Financial Assistance and Public Use Provisions in the above-captioned proceedings.

Sincerely,



Charles A. Spitulnik

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 309X)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

Docket No. AB-980 (Sub-No. 2X)

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
-- ABANDONMENT OF RESIDUAL COMMON CARRIER SERVICE --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

**MOTION OF SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR
EXPEDITED CONSIDERATION OF JOINT PETITION FOR EXEMPT
ABANDONMENT AND EXEMPTION FROM OFFERS OF FINANCIAL ASSISTANCE
AND PUBLIC USE PROVISIONS**

Correspondence with respect to this document
should be addressed to:

Charles A. Spitulnik
Allison I. Fultz
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
202-955-5600
202-955-5616 (Fax)
csputulnik@kaplankirsch.com
afultz@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Santa Clara Valley Transportation
Authority

January 18, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 309X)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE AND ABANDONMENT OF FREIGHT EASEMENT --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

Docket No. AB-980 (Sub-No. 2X)

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
-- ABANDONMENT OF RESIDUAL COMMON CARRIER SERVICE --
IN ALAMEDA COUNTY, CALIFORNIA
(SAN JOSE INDUSTRIAL LEAD)**

**MOTION FOR EXPEDITED CONSIDERATION OF JOINT PETITION FOR EXEMPT
ABANDONMENT AND EXEMPTION FROM OFFERS OF FINANCIAL ASSISTANCE
AND PUBLIC USE PROVISIONS**

I. Introduction

Santa Clara Valley Transportation Authority ("SCVTA") files this Motion for Expedited Consideration of the Joint Petition for Exemption from the Board's discontinuance and abandonment procedures filed by SCVTA and Union Pacific Railroad Company ("UP") in STB Docket Nos. AB-33 (Sub-No. 309X) and AB-980 (Sub-No.2X) on December 12, 2012 (the "Joint Petition"). The Joint Petition involves a 1.97 mile portion of the San Jose Industrial Lead from M.P. 5.38 to M.P. 7.35 near Warm Springs in Alameda County, California (the "Line"). SCVTA also files this Motion with respect to SCVTA's and UP's request accompanying the Joint Petition to exempt the proposed abandonment from offers of financial assistance under 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905. SCVTA and UP have filed the Joint Petition and associated requests for exemptions to permit SCVTA to develop the Line

as an extension of the Bay Area Rapid Transit System (“BART”), a mass transit network serving the San Francisco Bay Area. In the Federal Register Notice published on December 31, 2012, announcing this proceeding (77 Fed. Reg. 77,183), the Board indicated that it will issue its final decision no later than April 1, 2013. Because construction for the BART project is scheduled to occur within the right-of-way limits of the Line during the first quarter of 2013, SCVTA respectfully requests that this Board expedite its consideration of the Joint Petition. UP has authorized SCVTA to state that UP supports this Motion.

Expedited consideration is appropriate because of the lack of shippers on the Line, and absence of opposition to the proposed discontinuance and abandonment. The Line is contiguous to and in fact is a part of a line that already has been approved for abandonment.¹

Additionally, the environmental and historical impacts of the proposed action will be minimal and have already been addressed in a similar previous Board proceeding, *see fn.1 supra*, and in the BART extension planning process. The Board’s Office of Environmental Analysis (“OEA”) issued its Environmental Assessment in this proceeding on January 4, 2013, and has recommended that no environmental or historic preservation conditions be imposed.²

Accordingly, SCVTA requests expedited consideration of the Joint Petition and associated exemptions as soon as possible.

II. Background

SCVTA and UP are seeking the exempt discontinuance and abandonment proposed in the

¹ See, *Union Pacific R.R. Co. – Abandonment of Freight Easement – In Alameda and Santa Clara Counties, Cal.*, STB Docket No. AB 33 (Sub-No. 303X) (Service Date July 23, 2012), slip op. at 5; *Santa Clara Valley Transportation Authority – Abandonment of Common Carrier Service – In Alameda and Santa Clara Counties, Cal.*, STB Docket No. AB 980 (Sub-No. 1X) (Service Date July 23, 2012), slip op. at 5 (collectively, the “prior abandonment”).

² Office of Environmental Analysis, Environmental Assessment – *Union Pacific R.R. Co. – Abandonment of Freight Easement – In Alameda and Santa Clara Counties, Cal.*, STB Docket No. AB 33 (Sub-No. 309X) and *Santa Clara Valley Transportation Authority – Abandonment of Common Carrier Service – In Alameda and Santa Clara Counties, Cal.*, STB Docket No. AB 980 (Sub-No. 2X) (Service Date Jan. 4, 2013) (“Environmental Assessment”).

Joint Petition in order to allow for the Line's incorporation into the extension of BART into the Santa Clara Valley, a project that has been in planning for years. In December, 2002, UP sold the Line to SCVTA, but retained a freight easement over the Line. Pursuant to the proposed action now pending before the Board, UP will discontinue and abandon its freight easement, and SCVTA will abandon its residual common carrier obligation on the Line. SCVTA will retain ownership of the Line for the purpose of providing passenger mass transit through the Line's incorporation into the BART network.

As noted previously, *see* fn. 1 *supra* and accompanying text, on July 23, 2012, the Board granted a joint petition filed by UP and SCVTA for exempt abandonment of a segment of the San Jose Industrial Lead that is contiguous with the Line. SCVTA and UP initiated the prior abandonment in order to incorporate that segment, which is contiguous to the Line, into the BART network, and the expeditious review of the proposed abandonment in this proceeding will allow the construction of the BART extension to proceed on schedule.

III. Argument

Both the Line and the contiguous segment addressed in the prior abandonment share substantially the same features and characteristics, and the environmental impact of the proposed discontinuance and abandonment will likewise be substantially similar. Furthermore, no opposition has arisen to the proposed discontinuance and abandonment, and no shippers will be adversely affected by the proposed action. Accordingly, expedited consideration is warranted to permit construction of the BART extension to continue without delay.

Here, the single customer UP previously served via the Line is now served by UP on the railroad's adjacent Warm Springs Subdivision. Joint Petition at 5-6. There are no remaining shippers and no new shippers are likely to appear due to the changing character of development

along the Line away from industrial uses. Even if any future shippers do appear, they may be served by the adjacent Warm Springs Subdivision, an active freight line adjacent to the Line which UP still owns and uses to provide common carrier service. Any overhead traffic will similarly be routed over the Warm Springs Subdivision. Thus, in the absence of use of the Line for freight purposes or any opposition to the abandonment, expedited consideration is appropriate.

In addition, as was the case in the prior abandonment, there are minimal environmental or historical concerns in connection with the proposed discontinuance and abandonment of the Line. As with the prior abandonment, the environmental and historical issues regarding extension of BART have already been identified and addressed in that project's separate environmental and historical analysis. OEA has already issued its Environmental Assessment in connection with the Joint Petition, and has recommended that no environmental or historic preservation conditions be imposed. Environmental Assessment at 6 (Service Date Jan. 4, 2013). Accordingly, SCVTA believes it is appropriate for the Board to expedite consideration of the Joint Petition.

Finally, in addition to the factors discussed above, expedited consideration is warranted here to avoid impeding the progress of construction near and on the Line in order to incorporate it into the BART network. Local and federal governmental entities have devoted years of planning and significant resources to accomplishing the BART extension effectively and efficiently. The public interest in seeing the timely completion of this important public transit work supports expedited consideration of the Joint Petition in order to allow construction to proceed on the right-of-way according to schedule in the first quarter of 2013.

WHEREFORE, and in order to promote the public interest in timely completion of construction on the Line for the purposes of its inclusion in the BART network, SCVTA respectfully requests this Board to expedite its issuance of a ruling on the Joint Petition and associated exemptions, and that the decision be issued as soon as possible.

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 955-5600
cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Santa Clara Valley Transportation
Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2013, I caused to be served a copy of the foregoing MOTION FOR EXPEDITED CONSIDERATION to be served by first class mail, postage prepaid, and via e-mail upon:

UNION PACIFIC RAILROAD COMPANY
Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
312-777-2055
877-213-4433 (Fax)
mackshumate@up.com



Charles A. Spitulnik