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May 7, 2012

VIA E-FILING

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  
May 7, 2012  
Part of  
Public Record

CONCURRENCE WITH PETITION FOR ISSUANCE  
OF CERTIFICATE OF INTERIM TRIAL USE

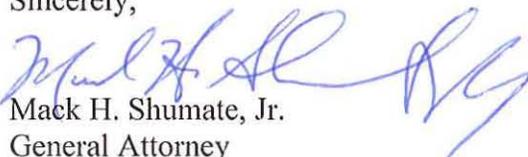
**Re: Docket No. AB-102 (Sub-No. 13), Missouri-Kansas-Texas Railroad Company ("MKT") – Abandonment – in St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Counties, MO**

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") as successor in interest to Missouri-Kansas-Texas Railroad Company ("MKT") has received a request from the City of Boonville, Missouri (the "City"), seeking the issuance of a Certificate of Interim Trail Use ("CITU") pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for the MKT Missouri River Bridge and related railroad property on the former MKT Line between M.P. 191.47 at Boonville and M.P. 191.16 North of Boonville, a distance of approximately .3 miles in Cooper and Howard Counties, Missouri (the "MKT Bridge"). As stated in the City's Petition for Issuance of Certificate of Interim Trail Use as filed with the Board on May 2, 2012, after prolonged and successful negotiations the City, Union Pacific and the State of Missouri have entered into the referenced Memorandum of Agreement (the "Memorandum of Agreement") which contemplates the issuance of a CITU for the MKT Bridge by the Board.

Union Pacific concurs with and supports City's Petition for issuance of a CITU for the MKT Bridge by the Board and desires to convey the MKT Bridge and related railroad property to the City of Boonville, Missouri in accordance with the subject to the National Trails System Act, 16 U.S.C. 1247(d) and the Memorandum of Agreement and respectfully requests that the Board approve City's Petition for a CITU. A copy of the City's Petition without exhibits is attached hereto as **Exhibit A** and hereby made a part hereof.

Sincerely,

  
Mack H. Shumate, Jr.  
General Attorney

Attachment

## CERTIFICATE OF SERVICE

I, Mack H. Shumate, hereby certify that on May 7, 2012, I served the foregoing document, **Concurrence with Petition for Issuance of Certificate of Interim Trial Use** on the following:

Megan B. McGuire  
City Counselor  
City of Boonville  
525 E. Spring Street  
Boonville, Missouri 65233  
[mmcguire@boonville-mo.org](mailto:mmcguire@boonville-mo.org)

Julie Thacher  
Mayor  
City of Boonville, Missouri  
City Hall  
525 E. Spring Street  
Boonville, Missouri 65233

Mary Bryan, Esq.  
Real Estate Attorney  
Missouri State Parks  
P.O. Box 176  
Jefferson City, MO 65102  
[mary.bryan@dnr.mo.gov](mailto:mary.bryan@dnr.mo.gov)



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Mack H. Shumate, Jr.  
Senior General Attorney



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CITY OFFICES • 525 E. SPRING STREET • BOONVILLE, MISSOURI 65233 • 660-882-2332 • FAX 660-882-6608

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May 2, 2012

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

Re: Docket No. AB 102 (Sub-No. 13), *Missouri-Kansas-Texas Railroad Company*  
(“MKT”) – *Abandonment – in St Charles, Warren, Montgomery, Callaway,*  
*Boone, Howard, Cooper and Pettis Counties, MO.*

*Petition for Issuance of a CITU; Statement of Willingness*

*Fee waiver requested per 49 CFR 1002.2(e)(1)*

Dear Honorable Brown:

Enclosed please find an original and 10 copies of the City of Boonville, Missouri’s (“City”) Petition For Issuance Of A Certificate Of Interim Trail Use, for filing with the Board in the above referenced matter. Counsel for the railroad (Union Pacific Railroad Company (“Union Pacific”) as successor to MKT) has authorized City to state that Union Pacific supports this petition and consents to the issuance of the requested CITU.

City is a unit of local government. Pursuant to 49 CFR 1002.2(e)(1), City requests a waiver of all fees otherwise due for this filing. Such waiver will assist in preserving an important bridge for interim trail use on rail property and is in the public interest.

Very Truly Yours

*Attorney For Petitioner*

Megan B. McGuire, City Counselor

Missouri Bar No. 50645

City of Boonville

525 E. Spring Street

Boonville, Missouri 65233

Office: 660-882-4002

E-mail: [mmcguire@boonville-mo.org](mailto:mmcguire@boonville-mo.org)

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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MISSOURI-KANSAS-TEXAS	)	
RAILROAD COMPANY –	)	
ABANDONMENT – IN ST.	)	
CHARLES, WARREN,	)	DOCKET NO. AB 102
MONTGOMERY, CALLAWAY,	)	(SUB-NO. 13)
BOONE, HOWARD, COOPER	)	
AND PETTIS COUNTIES, MO.	)	

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PETITION FOR ISSUANCE OF A  
CERTIFICATE OF INTERIM TRAIL USE

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City of Boonville, Missouri  
Julie Thacher, Mayor  
City Hall  
525 E. Spring Street  
Boonville, Missouri 65233  
Petitioner

By: Megan B. McGuire, City Counselor  
Missouri Bar No. 50645  
City of Boonville  
525 E. Spring Street  
Boonville, Missouri 65233  
Office: 660-882-4002  
FAX: 660-882-4004  
E-mail: mmcguire@boonville-mo.org  
Attorney for Petitioner

DATE FILED: May 3, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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MISSOURI-KANSAS-TEXAS	)	
RAILROAD COMPANY –	)	
ABANDONMENT – IN ST.	)	
CHARLES, WARREN,	)	DOCKET NO. AB 102
MONTGOMERY, CALLAWAY,	)	(SUB-NO. 13)
BOONE, HOWARD, COOPER	)	
AND PETTIS COUNTIES, MO.	)	

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**PETITION FOR ISSUANCE OF A  
CERTIFICATE OF INTERIM TRAIL USE**

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Pursuant to 49 CFR Section 1152.29(a), the City of Boonville, Missouri, a municipal corporation, hereby respectfully petitions for issuance of Certificate of Interim Trail Use (“CITU”) for rail banking and interim recreational trail use of the right of way and structure thereon known collectively as, MKT Missouri River Bridge (the “MKT Bridge”) owned by Union Pacific Railroad Company (the “UP”), successor in interest to Missouri-Kansas-Texas Railroad Company (the “MKT”), on the former MKT line between MP 191.47 at Boonville and MP 191.16 North of Boonville, a distance of approximately .3 miles in Cooper and Howard Counties, Missouri.

A Certificate of Interim Trail Use was granted in this case on April 22, 1987 (the “1987 CITU”) for the former MKT line between Sedalia, MO and Machens, MO, in accordance with an Interim Trail Use Agreement between MKT and Missouri Department of Natural Resources (the “Interim Trail Use Agreement”). However, the MKT Bridge was specially handled under the Interim Trail Use Agreement, with an option on the part of Missouri Department of Natural

Resources (MoDNR) to employ the MKT Bridge for interim trail purposes. In December 2004 MODNR informed UP it intended to exercise its trail use option for the MKT Bridge, but by letter dated May 20, 2005, MoDNR informed UP it was waiving its option to use the MKT Bridge. Five days later, UP filed a notice of consummation of abandonment of the MKT Bridge with the Board. The State of Missouri filed a petition for a declaratory order concerning the status of the MKT Bridge, contending that UP lacked authority to abandon the MKT Bridge and the purported abandonment consummation by UP was therefore null and void. Commenters Rails to Trails Conservancy, et al., supported the relief sought by the State and moved that section 106 of the National Historic Preservation Act be complied with in connection with the proposed MKT Bridge abandonment. City of Boonville concurred with the Commenters.

In a decision served July 13, 2010, the Board ruled that it retained jurisdiction over the rail property in question in this proceeding because UP's purported abandonment consummation was unlawful; in particular, the railroad had failed to comply with section 106 of the NHPA and had also failed to consult with and to obtain necessary permits from pertinent state and federal agencies for MKT Bridge removal. Although the Board granted vacation of the CITU, it ordered compliance with section 106. The Decision of the STB served on July 13, 2010 is herein attached as Appendix 1.

Petitioner, UP and the State, after prolonged negotiations, entered into a settlement agreement ("Memorandum of Agreement") executed by the various parties in May and June of 2011. That Memorandum of Agreement provides, among other things, that MoDOT will cooperate in providing substantial (80% of an estimated \$20,000,000 in costs) financial support for construction of a new bridge (the "New Osage River Bridge") over the Osage River for use by UP along with public vehicular and pedestrian use. The Memorandum of Agreement further

provides that upon commencement of such construction so financed, and upon issuance of a CITU for the MKT Bridge by the STB, UP will convey the MKT Bridge and related railroad property to the City of Boonville in accordance with and subject to the National Trails Systems Act, 16 U.S.C. 1247(d), and the terms and conditions of the STB decision approving the interim use/rail banking of the MKT Bridge. A copy of the Memorandum of Agreement is attached as Appendix 2.

Construction has now commenced on the New Osage River Bridge. Under the Memorandum of Agreement, it is now timely to request this Board to issue a CITU for the MKT Bridge. Missouri Department of Natural Resources, State Historic Preservation Office (the "SHPO") has issued a letter stating that it supports the rail banking/interim trail use contemplated by the Settlement Agreement and has determined that such use would create no adverse impact to historic preservation. A copy of the SHPO's letter is attached as Appendix 3.

The U.S. Coast Guard continues to support a transfer of ownership to the Petitioner and has no objections to Petitioner taking over responsibility for the MKT Bridge for interim trail use so long as the MKT Bridge is used for some form of transportation use such as the proposed trail use and that the Petitioner will undertake and assume the obligations under the Code of Federal Regulations with regard to bridges over navigatable waterways. The U.S. Coast Guard has advised Petitioner to contact the U.S. Coast Guard when Petitioner becomes the owner of the MKT Bridge and verify that Petitioner is the contact entity for legal and regulatory matters administered by the U.S. Coast Guard with respect to the MKT Bridge.

In order to issue a CITU for the City of Boonville to acquire the MKT Bridge, it is necessary for the Petitioner to file a "Statement of Willingness to Assume Financial

Responsibility” (the “Statement”) for the property in question. The Statement prepared in accordance with 49 CFR 1152.29 (a)(2) is attached in Appendix 4. The Statement includes the map required by 49 CFR 1152.29 (a)(1) and the acknowledgment required by 49 CFR 1152.29(3).

Petitioner is authorized to represent that MoDNR remains the owner/interim trail manager for the remainder of the Katy Trail and that MoDNR supports this petition and the relief requested herein. Petitioner is also authorized to represent that Union Pacific Railroad Company supports the relief requested herein, and consents to the issuance of the CITU. Petitioner is further authorized to represent to the Board and to the U.S. Coast Guard that Petitioner as owner of the MKT Bridge will abide by all applicable federal laws and regulations administered by the U.S. Coast Guard with regard to the MKT Bridge.

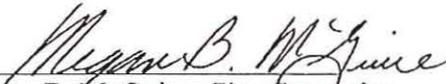
Petitioner appreciates the cooperation of the various parties, and believes that issuance of the CITU and preservation of the MKT Bridge not only benefits the public but also achieves the goals and objectives of the Memorandum of Agreement and the applicable statutes and federal regulations including Section 106 of the NHPA.

**WHEREFORE**, the Board is respectfully requested to issue the CITU and to take such other action as is appropriate to reinstate rail banking status for the MKT Bridge and related railroad property thereby assisting with the implementation of those portions of the Memorandum of Agreement subject to the Board’s jurisdiction.

Respectfully submitted,

  
Julie Thacher, Mayor  
City of Boonville, Missouri  
City Hall  
525 E. Spring Street  
Boonville, Missouri 65233

Petitioner

By   
Megan B. McGuire, City Counselor  
Missouri Bar No. 50645  
City of Boonville  
525 E. Spring Street  
Boonville, Missouri 65233  
Office: 660-882-4002  
FAX: 660-882-4004  
E-mail: [mmcguire@boonville-mo.org](mailto:mmcguire@boonville-mo.org)

Attorney for Petitioner

DATE FILED: May 3, 2012

Docket No. AB 102 (Sub-No. 13)

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2012, I served the foregoing document, Petition For Issuance Of  
A Certificate of Interim Trail Use, on:

1) Mack Shumate, Esq., Senior General Attorney, Union Pacific Railroad Company, 101 N.  
Wacker Dr. Suite 1920, Chicago IL 60606-1718, [mackshumate@up.com](mailto:mackshumate@up.com),

And

2) Mary Bryan, Esq., Real Estate Attorney, Missouri State Parks, P.O. Box 176, Jefferson City,  
MO, 65102, [mary.bryan@dnr.mo.gov](mailto:mary.bryan@dnr.mo.gov).

by e-mail and first-class, U.S. mail, postage prepaid.

  
Megan B. McGuire