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232588

July 20, 2012

ENTERED  
Office of Proceedings  
July 20, 2012  
Part of  
Public Record

**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

**PETITION FOR WAIVER AND REVOCATION  
OF IMPLEMENTATION  
AND  
REQUEST TO HOLD NOTICE OF EXEMPTION IN ABEYANCE**

**RE: Docket No. AB-33 (Sub No. 307X); Petition for Waiver Under 49 C.F.R. 1110.9,49 C.F.R. 1117.1 and 49 C.F.R. 1121.4(g) from the Public Use, Interim Trail Use and Financial Assistance Procedures for the Proposed Abandonment Exemption of the Boulder Industrial Lead for Reasons of Overriding Public Need**

Dear Ms. Brown:

Enclosed for filing in the above proceeding is Union Pacific Railroad Company's ("Union Pacific") "Petition for Waiver and Revocation of Implementation and Request to Hold Notice of Exemption in Abeyance". We are requesting expedited action on this petition. Union Pacific requests that the Board hold in abeyance the related Notice of Exemption filed in AB33 (Sub No. 307X) until the Board rules on this Petition for Waiver.

Very truly yours,



Mack H. Shumate, Jr.  
Senior General Attorney

**FILED**  
July 20, 2012  
**SURFACE**

**FEE RECEIVED**  
July 20 2012  
**SURFACE**  
**TRANSPORTATION BOARD**  
MHS/mml

**TRANSPORTATION BOARD**

2012\_07\_20\_Letter to Cynthia Brown filing Petition for Waiver



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. AB-33 (SUB-NO. 307X)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
ADAMS, WELD AND BOULDER COUNTIES, COLORADO  
(BOULDER INDUSTRIAL LEAD)**

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**PETITION FOR WAIVER UNDER 49 C.F.R. 1110.9,  
49 C.F.R. 1117.1 AND 49 C.F.R. 1121.4(g) FROM THE PUBLIC  
USE, INTERIM TRAIL USE AND FINANCIAL ASSISTANCE  
PROCEDURES FOR THE PROPOSED ABANDONMENT  
EXEMPTION OF THE BOULDER INDUSTRIAL LEAD  
FOR REASONS OF OVERRIDING PUBLIC NEED**

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**PETITION FOR WAIVER AND REVOCATION  
OF IMPLEMENTATION  
AND  
REQUEST TO HOLD NOTICE OF EXEMPTION IN ABEYANCE**

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UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr.  
Senior General Attorney  
101 N. Wacker Drive, Room 1920  
Chicago, IL 60606  
312-777-2055

Dated: July 20, 2012  
Filed: July 20, 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. AB-33 (SUB-NO. 307X)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
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**PETITION FOR WAIVER UNDER 49 C.F.R. 1110.9,  
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**PETITION FOR WAIVER AND REVOCATION  
OF IMPLEMENTATION  
AND  
REQUEST TO HOLD NOTICE OF EXEMPTION IN ABEYANCE**

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This Petition for Waiver and Revocation of Implementation and Request to hold the Notice of Exemption in Docket No. AB-33 (SUB NO. 307X) in abeyance is filed on behalf of Union Pacific Railroad Company ("Union Pacific") pursuant to 49 C.F.R. 1110.9, 49 C.F.R. 1117.1 and 49 C.F.R. 1121.4(g). On June 27, 2012, Union Pacific filed for an exempt abandonment of the Union Pacific's Retained Freight Operating Easement over the remaining portion of the Boulder Industrial Lead from Milepost 9.27 near Eastlake to the end of the Line at Milepost 33.17 near Valmont, a distance of 23.90 miles in Adams, Weld and Boulder Counties,

Colorado (the "Line"). Union Pacific supplemented the Notice of Exemption filing with a request for an Exemption from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and the Public Use Provisions of 49 U.S.C. § 10905 on June 27, 2012 (the "Supplement"). The Supplement should have been made as a petition for waiver and revocation of implementation rather than as part of the Notice of Exemption. Union Pacific hereby withdraws the Supplement to the Notice of Exemption and hereby files this Petition for Waiver and Revocation of Implementation. Union Pacific respectfully requests that the Board hold in abeyance any decision with regard to the Notice of Exemption in this matter until the Board has issued its decision with regard to this Petition for Waiver and Revocation of Implementation.

In accordance with 49 C.F.R. 1110.9, 49 C.F.R. 1117.1 and 49 C.F.R. 1121.4(g), the Union Pacific respectfully requests that the Board waive and revoke the imposition of (1) any public use conditions under 49 C.F.R. 1152.28, (2) any conditions under the Trails Act, 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29 and (3) any Financial Assistance Procedures under 49 C.F.R. 1152.27 as being necessary and proper, in connection with Union Pacific's Notice of Exemption for an exempt abandonment of Union Pacific's Retained Freight Operating Easement over the Line, for the implementation of the valid public purpose covered by the Master Plan for the Denver Regional Transportation District's ("RTD") integrated mass transit system known as, "FasTracks."

Waiver and Revocation of the imposition of the public use conditions under 49 C.F.R. 1152.28, the Trails Act conditions under 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29 and the Financial Assistance Procedures under 49 C.F.R. 1152.27 is typically granted when the right-of-

way is needed for a valid public purpose and there is no overriding public need for continued rail service on the rail line for which abandonment authority is sought.<sup>1</sup>

The Line, over which Union Pacific seeks to give up its freight operating easement rights, was sold to RTD in June of 2009 and is incorporated into the Master Plan for RTD's integrated mass transit system known as "FasTracks." FasTracks encompasses a regional public passenger rail and bus network for the greater Denver Colorado area. In that the Line will be incorporated into the RTD mass transit system, the right-of-way which makes up the Line from Milepost 9.27 near Eastlake to the end of the Line at Milepost 33.17 near Valmont is not suited for (1) other public purposes including roads or highways, other forms of mass transportation, trails, conservation, energy production or transmission or recreation, and (2) there is no overriding public need for continued railroad freight operations in that no originating, terminating or overhead railroad freight traffic has moved or has been requested to move on or over the Line for well over two (2) years.

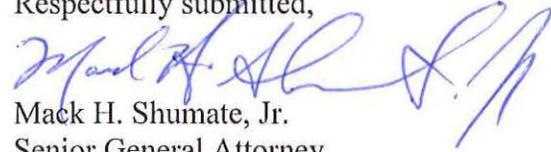
WHEREFORE, in that (1) the right-of-way which makes up the subject portion of the Boulder Industrial Lead has been acquired and is needed for a valid public use and purpose by the Denver Regional Transportation District as part of its Master Plan for the mass transit system known as, "FasTracks," (2) the right-of-way is unavailable for Trails Use and (3) there is no overriding public need of the right-of-way for the purpose of providing common carrier freight

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<sup>1</sup> See Missouri Pacific Railroad Company – Abandonment and Discontinuance of Operations Exemption – In Houston, Harris County, TX, Docket No. AB-3 (Sub-No. 139X) et al., (STB Decision served December 31, 1996. Proposed abandonment exempted from §§ 10904 and 10905); Southern Pacific Transportation Company – Discontinuance of Service Exemption – In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al., (ICC served December 23, 1994); Missouri Pacific Railroad Company – Abandonment – In Harris County, Tx, Docket No. AB-3 (Sub-No. 105X) (ICC served December 22, 1992); Chicago & North Western Transportation Company – Abandonment Exemption – In Blackhawk County, IA, Docket No. AB 284 (Sub No. 1X (ICC served April 1, 1988.

service by railroad for public convenience and necessity, the Union Pacific seeks imposition of the waivers and revocations hereinabove requested.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mack H. Shumate, Jr.", is written over the typed name.

Mack H. Shumate, Jr.  
Senior General Attorney  
101 N. Wacker Drive, Room 1920  
Chicago, IL 60606  
312-777-2055

Dated: July 20, 2012