

ORIGINAL

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THOMAS F. MCFARLAND



April 16, 2002

By UPS overnight

Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re: STB Docket No. AB-33 (Sub-No. 158X), *Union Pacific Railroad Company -- Abandonment Exemption -- in McPherson, Ellsworth and Rice Counties, KS*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Supplement To Explanation Why Line Segment Qualifies For A Notice Of Interim Trail Use, Including Motion For Leave To File Supplement Out-Of-Time, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

A handwritten signature in cursive that reads 'Tom McFarland'.

Thomas F. McFarland

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ENTERED  
Office of the Secretary

APR 17 2002

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD )  
COMPANY -- ABANDONMENT ) DOCKET NO. AB-33  
EXEMPTION -- IN MCPHERSON, ) (SUB-NO. 158X)  
ELLSWORTH AND RICE COUNTIES, )  
KS )



**SUPPLEMENT TO EXPLANATION WHY LINE  
SEGMENT QUALIFIES FOR A NOTICE OF  
INTERIM TRAIL USE, INCLUDING MOTION  
FOR LEAVE TO FILE SUPPLEMENT OUT-OF-TIME**

CITY OF MARQUETTE, KANSAS  
FREDERICK L. PETERSON, City Clerk  
113 North Washington Street  
P.O. Box 401  
Marquette, KS 67464

Trail Use Applicant

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1194  
(312) 236-0204

Attorney for Trail Use Applicant

DATE FILED: April 17, 2002

BEFORE THE  
SURFACE TRANSPORTATION BOARD



UNION PACIFIC RAILROAD )  
COMPANY -- ABANDONMENT ) DOCKET NO. AB-33  
EXEMPTION -- IN MCPHERSON, ) (SUB-NO. 158X  
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**SUPPLEMENT TO EXPLANATION WHY LINE  
SEGMENT QUALIFIES FOR A NOTICE OF  
INTERIM TRAIL USE, INCLUDING MOTION  
FOR LEAVE TO FILE SUPPLEMENT OUT-OF-TIME**

Pursuant to 49 C.F.R. § 1117.1, the CITY OF MARQUETTE, KANSAS (City) hereby files this Supplement to its explanation of why a two-mile line segment in the City of Marquette qualifies for a Notice of Interim Trail Use (NITU). This filing includes a motion for leave to file this Supplement out-of-time.

**BACKGROUND**

The two-mile segment in Marquette is part of a 28.02-mile rail line between Geneseo and Lindsborg, KS (Geneseo-Lindsborg line) for which an exemption for abandonment was issued in a Board decision served February 9, 2001. An NITU for the two-mile segment was issued in that decision.

The negotiation period for that NITU was extended on two occasions. On March 5, 2002, the City filed a request for another extension of the negotiating period.

In a letter filed on March 18, 2002, Union Pacific Railroad Company (UP), the owner of the Geneseo-Lindsborg line, notified the Board that on January 8, 2002 it consummated

abandonment of segments of that line on both ends of the two-mile segment.

In a decision served March 29, 2002, the Board denied the extension of NITU negotiating period sought by the City on the ground that a predicate for interim trail use of a railbanked line is that the line be available for future reactivation of rail service, and that it appeared that UP's consummation of abandonment on both ends of the two-mile segment may have severed that segment from the national rail system preventing future restoration of rail service. However, the Board provided that UP or the City could submit evidence explaining why the segment still qualifies for an NITU. The Board stated that if the parties were to establish that the segment is eligible for a NITU, a subsequent decision would be issued granting the requested extension.

**MOTION FOR LEAVE TO FILE SUPPLEMENT**

The Board provided that evidence explaining why the segment qualifies for an NITU is to be filed within 10 days from the date of service of the March 29, 2002 decision, i.e., by April 8, 2002. The City made a timely filing in response to that provision, but it was made without representation by counsel. Primarily on the advice of the State of Kansas, Department of Transportation (KDOT), which supports railbanking and interim trail use of the two-mile segment, the City retained counsel experienced in trail use and rail abandonment matters. However, counsel was not retained in time to comply with the 10-day filing requirement.

This constitutes a supplemental filing in behalf of the City after consultation with counsel. Good cause exists for granting leave to file this Supplement out-of-time. The City is not well-versed in trail use and rail abandonment matters. Until advised by KDOT, the City was not aware of the benefit of advice of experienced counsel in the circumstances. Upon being retained, counsel prepared and filed this Supplement with all due haste. The delay between this

filing and the due date for filing has not been excessive. Acceptance of this Supplement for filing will not prejudice any interest. There has been no filing which has opposed a determination that the two-mile segment is eligible for an NITU.

### SUPPLEMENT

The two-mile segment continues to be eligible for an NITU because in the event of a future demand for rail service to or from the segment, such rail service can be reactivated in either of two ways.

First, such rail service can be reactivated to connect with UP's active rail line at McPherson, Kansas by utilizing public rights-of-way and a railbanked right-of-way. The public rights-of-way are Kansas Highway 175 from Marquette north to connection with Kansas Highway 4, thence east on Highway 4 to Lindsborg, Kansas. At Lindsborg, Highway 4 intersects the Meadowlark Trail, which extends south to point of connection with UP's active rail line at McPherson, Kansas.<sup>1/</sup> The proposed route for reactivation of rail service is illustrated on the attached Exhibit 1. The State of Kansas has agreed to cooperate with the City and UP to utilize public rights-of-way in conjunction with the named highways in the event of future reactivation of rail service. The right to reactivate rail service over the right-of-way of the Meadowlark Trail is provided by law. No private land would have to be acquired for reactivation of rail service under this scenario.

Secondly, such rail service can be reactivated to connect with UP at McPherson by means of UP utilizing its eminent domain authority to acquire railroad right-of-way between the

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<sup>1/</sup> The trail sought to be acquired by the City of Lindsborg, KS in the instant proceeding would connect with the Meadowlark Trail.

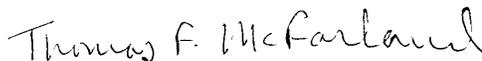
Meadowlark Trail at or near Lindsborg and the two-mile segment at Marquette. The Meadowlark Trail would be used to reactivate rail service between Lindsborg and McPherson. The City would cooperate with UP financially in acquiring right-of-way for reactivation of rail service. UP possesses the requisite condemnation authority by virtue of Kans. Rev. Stats. §§ 66-501, *et seq.*

The Board should find that the foregoing alternate means of reconnecting the two-mile segment to the national rail system at McPherson satisfy the predicate of the National Trails System Act that a railbanked line be subject to reactivation for rail service in the event of future demand. Consistent with the expressed intent of that Act that the Board act to further railbanking and interim trial use wherever possible, the Board should find that the two-mile segment continues to be eligible for an NITU. On further review, therefore, the Board should extend the NITU negotiating period for that segment, as requested.

Respectfully submitted,

CITY OF MARQUETTE, KANSAS  
FREDERICK L. PETERSON, City Clerk  
113 North Washington Street  
P.O. Box 401  
Marquette, KS 67464

Trail Use Applicant



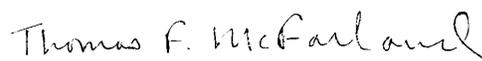
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(312) 236-0204

Attorney for Trail Use Applicant

DATE FILED: April 17, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2002, I served the foregoing document, Supplement to Explanation Why Line Segment Qualifies For A Notice Of Interim Trail Use, Including Motion For Leave To File Supplement Out-Of-Time, on Mack H. Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606, and John Jay Rosacker, Kansas Department of Transportation, Bureau of Transportation Planning, Thacher Building, 217 SE Fourth Street, 2<sup>nd</sup> fl., Topeka, KS 66603-3504, by UPS overnight mail.



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Thomas F. McFarland

