



KAPLAN KIRSCH ROCKWELL

May 8, 2007

***By Efiling***

Honorable Vernon A. Williams  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**Re: Docket No. AB-980-X, Santa Clara Valley Transportation Authority –  
Abandonment Exemption – In Santa Clara and Alameda Counties, CA**

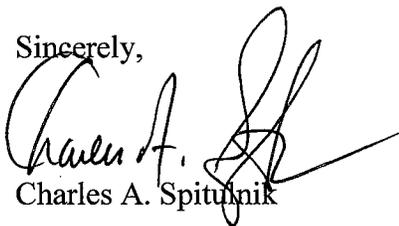
Dear Sir:

I am attaching for filing in the above-referenced proceeding, the following two documents:

- (1) Motion of the Santa Clara Valley Transportation Authority for Leave to File a Notice of Consummation, Time for Filing Having Otherwise Expired
- (2) Notice of Consummation (tendered in the event of a favorable ruling on the above Motion).

If you have any questions please feel free to call on me.

Sincerely,



Charles A. Spitulnik

Enclosure

134488v1

Before the  
Surface Transportation Board  
Washington, D.C.

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**Docket No. AB-980X**

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**Santa Clara Valley Transportation Authority –  
Abandonment Exemption –  
In Santa Clara County and Alameda Counties, CA**

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**MOTION OF THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
FOR LEAVE TO FILE A NOTICE OF CONSUMMATION,  
TIME FOR FILING HAVING OTHERWISE EXPIRED**

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The Santa Clara Valley Transportation Authority (“SCVTA”), by undersigned counsel, hereby petitions this Board pursuant to 49 C.F.R. §§1104.7(b) and 1117.1 for leave to file its Notice of Consummation of the abandonment in the above-referenced proceeding, the time for filing having otherwise expired. In anticipation of a favorable ruling on this Motion, SCVTA is tendering its Notice of Consummation for filing along with this motion.

On December 16, 2005, the Board served a decision granting the Petition for Exemption with respect to the abandonment in this proceeding, subject to four conditions. As described in the Notice of Consummation being tendered for filing today,<sup>1</sup> SCVTA has complied with all of them. However, due to a change in law firms on the part of undersigned counsel, which move did not include a transfer of all calendar reminders, SCVTA did not submit the Notice of Consummation for this abandonment prior to December 15, 2006, the date it was required to be filed pursuant to 49 C.F.R. §1152.29(e)(2).

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<sup>1</sup> SCVTA is tendering the Notice of Exemption along with this Motion in the event that the Board grants the requested leave to file that is requested herein.

The requirement for submission of a Notice of Consummation is set forth in the regulations, and is not statutory. As a result, the Board frequently extends the deadline for submission of the Notice upon a showing of good cause, even after the deadline for submitting a notice of consummation had passed.<sup>2</sup>

SCVTA submits that good cause exists to grant the requested leave to file. No prejudice has accrued to any party by virtue of the delay in filing, and no party's interest will be prejudiced by permitting the Notice to be filed now. SCVTA's abandonment did not affect the actual provision of freight service on the lines that are the subject of this proceeding. SCVTA acquired these lines from the Union Pacific Railroad Company ("UPRR") in transactions that were the subject of the Notice of Exemption in STB F.D. NO. 34292, *Santa Clara Valley Transp. Auth. - - Acquisition Exemption - - Union Pacific R. R. Co.* (Service Date December 26, 2002). UPRR retained the right and obligation to provide freight service over the lines.

With respect to the San Jose Industrial Lead (from MP 16.3 to MP 17.49) (the "Industrial Line"), UPRR subsequently sought and received authority to discontinue providing freight service in STB Docket No. AB-33 (Sub-No. 221X), *Union Pacific R. Co. - Abandonment Exemption - In Santa Clara Co., CA* (November 26, 2004). UPRR arranged to provide freight service to the sole shipper on the line, Smurfit Stone Recycling Corp., via another nearby line.

UPRR also filed a Notice of Exemption with respect to the segment of the Milpitas Line that is the subject of this proceeding. STB Docket No. AAB-33 (Sub-No. 211X), *Union Pacific R. Co. - Abandonment Exemption - In Alameda Co., CA* (Service Date November 12, 2003).

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<sup>2</sup> E.g., STB Docket No. AB -565 (Sub-No. 6X); *New York Central Lines, LLC - Abandonment Exemption - IN Shelby County, OH* (Service Date March 26, 2004) (request for extension of time to file Notice of Consummation filed one day after the abandonment authority had expired); STB Docket No. AB-55 (Sub-No. 606X), *CSX Transportation, Inc. - Abandonment Exemption - In Allegheny Co., PA.* (Service Date August 26, 2003) (date for submission of notice of consummation had been extended to July 8, 2003 to allow for negotiation of trail use agreement; railroad filed request for extension of date to submit notice of consummation one month after the last extension of the negotiating period had expired, and as a result the abandonment authority granted in the original decision had expired as well)

Because there had been no traffic on the line for more than two years, UPRR was able to process this abandonment under the Board's expedited class exemption procedure. 49 C.F.R. §1152.50.

Because UPRR had ceased its operations on these line segments and SCVTA had never held itself out to be a provider of freight service, no shippers have been led to believe by virtue of the absence of a notice of consummation from SCVTA as of this date, that freight service remains available on this line. That is, no one has been prejudiced by the absence of a Notice of Consummation as of this date.

Requiring SCVTA to start the abandonment process over would, on the other hand, be contrary to the interests of the public. The taxpayers served by SCVTA would be required to expend resources that could be used instead to support the mass transit services that SCVTA provides.

No party objected to the abandonment. The freight carrier that had held itself out as the provider of freight service on these line segments has long since secured authority to cease operations on them, and has exercised that authority. No party has any reason to believe that freight service remains available on the subject lines. Because no party has been prejudiced by the inadvertent failure to submit the Notice of Consummation, and because the interests of the taxpayers of the district served by SCVTA would be adversely affected by the consequences of not allowing submission of the Notice of Consummation today, SCVTA respectfully requests

this Board to grant SCVTA's Motion for Leave to file the Notice of Consummation, time for filing having otherwise expired.

Dated: May 8, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

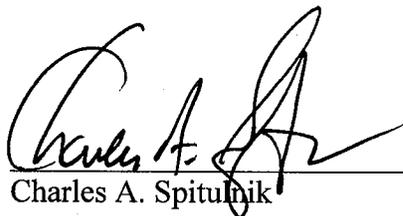
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Counsel for Santa Clara Valley  
Transportation Authority

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Motion of Santa Clara Valley Transportation Authority for Leave to File a Notice of Consummation, Time for Filing Having Otherwise Expired, upon all parties of record in this proceeding by first class mail with postage prepaid and properly addressed.

Dated this 8<sup>th</sup> day of May, 2007.



Charles A. Spitulnik

**Before the  
Surface Transportation Board  
Washington, D.C.**

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**Docket No. AB-980X**

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**Santa Clara Valley Transportation Authority –  
Abandonment Exemption –  
In Santa Clara County and Alameda Counties, CA**

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**NOTICE OF CONSUMMATION BY  
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

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The Santa Clara Valley Transportation Authority (“SCVTA”), by undersigned counsel, hereby submits its Notice of Consummation of the abandonment authority provided in this proceeding.<sup>1</sup>

On December 16, 2005, the Board served a decision granting the Petition for Exemption with respect to the abandonment in this proceeding, subject to four conditions:

- 1) *SCVTA was required to notify the National Geodetic Survey prior to beginning salvage activities. SCVTA has not yet engaged in any salvage activities and will notify the NGS prior to beginning.*
- 2) *SCVTA was required to meet with the California Public Utilities Commission (“CPUC”) to address safety concerns that CPUC had identified in its comments on the environmental report that SCVTA submitted in this proceeding, and to report the results of those consultations in writing to SEA. By letter dated March 6, 2006, SCVTA advised*

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<sup>1</sup> The deadline for submitting this Notice of Consummation expired December 15, 2006. SCVTA is today submitting a Motion for Leave to File the Notice of Consummation, Time for Filing Having Otherwise Expired, and is tendering this Notice in the event of a favorable ruling on the Motion.

Victoria Rutson, Chief of the Section of Environmental Analysis, of its compliance with this condition.

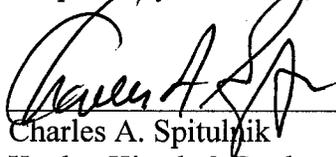
(3) *SCVTA was required to retain interests and preserve the integrity of historic structures until it complied with the requirements of 46 U.S.C. §470f.* By a subsequent decision in this proceeding, served on March 15, 2006, this condition was removed.

(4) *Serve a copy of the decision on Smurfit Stone Recycling Corporation, the sole shipper on the line.* On December 21, 2005, counsel for SCVTA submitted a Certificate of Service, confirming its compliance with this requirement.

WHEREFORE, having sought an extension of the time for filing this Notice of Consummation, and having complied with all of the conditions of the Decision served on December 16, 2005, SCVTA hereby notifies the Board that it is consummating the abandonment authority granted in this proceeding.

Dated: May 8, 2007

Respectfully submitted,



Charles A. Spitulnik  
Kaplan Kirsch & Rockwell LLP  
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Suite 905  
Washington, DC 20036  
(202) 955-5600  
[csputulnik@kaplankirsch.com](mailto:csputulnik@kaplankirsch.com)

Counsel for Santa Clara Valley  
Transportation Authority

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Notice of Consummation upon all parties of record in this proceeding by first class mail with postage prepaid and properly addressed.

Dated this 8<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
Charles A. Spitulnik