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September 18, 2020

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September 18, 2020
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Via E-File

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W., Room 1034
Washington, DC 20024

Re: STB Docket No. AB-33 (Sub-No. 346X)

Dear Ms. Brown:

Attached for filing in the above-referenced docket is a Verified Petition for Exemption pursuant to 49 U.S.C. § 10502.

The filing fee of \$8,100 was paid using Pay.gov.

Sincerely,

s/ Jeremy M. Berman

Jeremy M. Berman

FEE RECEIVED
September 18, 2020
SURFACE
TRANSPORTATION BOARD

FILED
September 18, 2020
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 346X)

**UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN KOOTENAI COUNTY, ID**

PETITION FOR EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Jeremy M. Berman
General Attorney
1400 Douglas Street STOP 1580
Omaha, NE 68179
(402) 544-4735
jmberman@up.com

Dated: September 18, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 346X)
UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN KOOTENAI COUNTY, ID

Petition For Exemption

Union Pacific Railroad Company ("UP") petitions the Surface Transportation Board ("STB" or "Board") to exempt from 49 U.S.C. § 10903, under 49 U.S.C. § 10502, UP's abandonment of an approximately 1.16 mile rail line which is a portion of the Coeur D'Alene Industrial Lead in Coeur D'Alene (the "Line") between milepost 1.09 near and milepost 2.25 in Coeur D'Alene, Kootenai County, Idaho, traversing U.S. Postal Service Zip Codes 83854.

I. Proposed Transaction

UP is seeking to abandon the Line and sell the track and property to the State of Idaho through its Department Of Transportation ("IDOT"). There is one shipper on the line, AmeriGas Propane ("AmeriGas"), which has reached an agreement with IDOT to relocate its facility off of the Line. A map showing the location of the line to be abandoned is attached to this Petition as **Exhibit 1**. Abandonment of the will facilitate an IDOT project to expand Highway 41. UP intends to convey the property to IDOT for use as a trail subject to a certificate of interim trail use in order to connect with an existing trail. See STB Docket No. AB-33 (Sub-No. 218X).

Based on information in UP's possession, the Line does not contain federally granted rights of way. The right of way is primarily fee title. Any documentation in UP's possession concerning ownership of the Line will be made available to those requesting it.

II. Background

The Line was constructed by the Coeur d'Alene & Pend d'Oreille Railway in the early 1900's. The Line was subsequently operated by the Spokane International Railroad, which was acquired by UP in the 1950's. The Line connects to UP's Spokane Subdivision and is currently used to serve one customer, AmeriGas. UP's track beyond the Line was the subject of a previous abandonment proceeding in AB-33 (Sub-No. 218X) and is currently subject to a certificate of interim trail use.

III. Exemption Standards Have Been Met

UP seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit it to abandon the Line. Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that: (1) continued regulation is not necessary to carry out the Rail Transportation Policy ("RTP") of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

The Board recently allowed exemptions under similar circumstances in *Wisconsin Central Ltd.—Aban. Exemption—in Lake County, Ill.*, AB 303 (Sub-No. 46X) (STB served June 25, 2015) ("*Wisconsin Central*"), *Brandon Railroad, L.L.C.—Aban. Exemption—in Douglas County, Neb.*, AB 1182X (STB served May 25, 2016)

(“*Brandon*”), and *BNSF Railway Company—Aban. Exemption—in Flathead County, Mont.*, AB 6 (Sub-No. 495X) (STB served Aug. 14, 2017) (“*BNSF*”).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2), (7). *See, e.g., Wisconsin Central*, slip op. at 2; *Brandon*, slip op. at 2; *BNSF*, slip op. at 2. Since the only shipper on the Line is already planning to relocate, there will be no loss of rail service.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since AmeriGas, the only shipper using the Line, is relocating and will not be deprived of any needed rail services.

Granting the Petition would also foster sound economic conditions and ensure effective coordination between UP and IDOT by facilitating IDOT’s highway expansion project. 49 U.S.C. § 10101(5).

B. This Transaction Is Of Limited Scope

UP is seeking this exemption to abandon 1.16 miles of track which serves only one customer. The customer has agreed to relocate its facility and will not be harmed by the if the exemption is allowed. The proposed abandonment is of limited scope.

C. This Transaction Will Not Result In An Abuse Of Market Power

The lone shipper located on the Line is planning to relocate its facility.

Regulation is not necessary to protect the one shipper on the Line because the shipper has voluntarily agreed that its not require a rail-served facility on the Line.

IV. Other Required Information

A. Labor Protection

UP is agreeable to the labor protection conditions imposed in abandonment proceedings as prescribed in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 ICC 91 (1979).

B. Certifications

Attached as **Exhibit 2** is a Certificate of Service and Publication, pursuant to the notice requirements of 49 C.F.R §§ 1152.50(d)(1), 1105.11 and 1105.12.

C. Environmental And Historic Reports

A copy of the cover letter which accompanied UP's Combined Environmental and Historic Report ("CEHR"), containing the information required by 49 C.F.R. §§ 1105.7(e) and 1105.8, and delivered in accordance with 49 C.F.R. 1105.11, is attached as **Exhibit 3**.

D. Federal Register Notice

A draft Federal Register notice is attached to this Petition as **Exhibit 4**.

V. Conclusion

The proposed transaction is of limited scope, and its regulation is not necessary to carry out the rail transportation policy or to protect shippers from the abuse of market power. Union Pacific Railroad Company respectfully requests that the Board issue a decision exempting the proposed abandonment from the provisions of 49 U.S.C. § 10903 and direct that the exemption be effective on the date of the Board's decision.

Respectfully submitted,

s/ Jeremy M. Berman

UNION PACIFIC RAILROAD COMPANY

Jeremy M. Berman

General Attorney

1400 Douglas Street STOP 1580

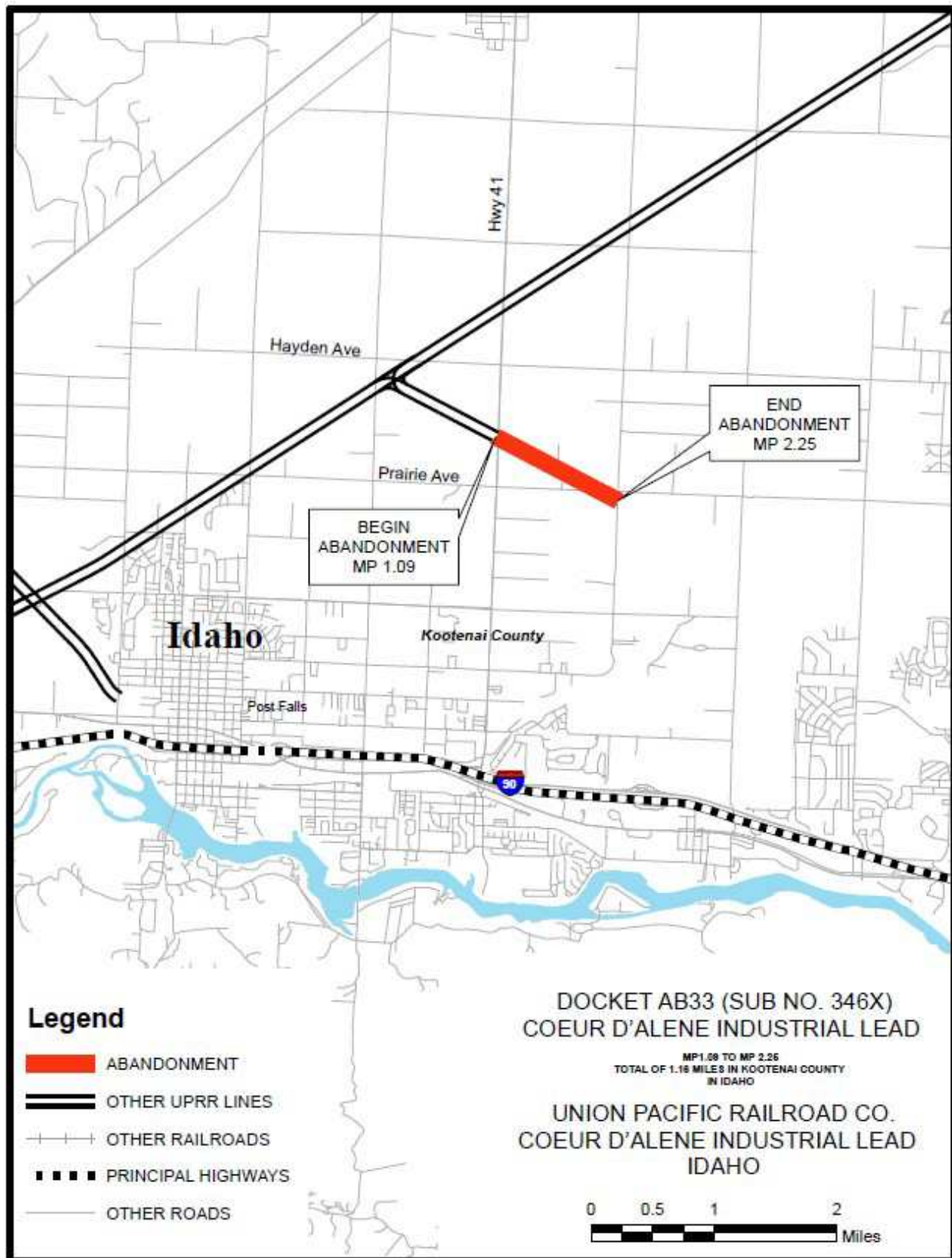
Omaha, NE 68179

(402) 544-4735

(402) 501-0129 (FAX)

jmberman@up.com

Dated: September 18, 2020



Docket No. AB-33 (Sub-No. 346X)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN KOOTENAI COUNTY, ID

CERTIFICATE OF SERVICE AND PUBLICATION

49 C.F.R. § 1152.50(d)(1) – Notice

The undersigned certifies that on August 21, 2020 (at least 10 days before a Notice of Exemption is filed), written notice was given by Union Pacific stating Union Pacific's intent to file this Petition for Exemption. Said written notice (a copy of which is attached hereto as **Attachment 1**) was served on the following:

Said written notice (a copy of which is attached hereto as **Attachment 1**) was served on the following:

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

National Park Service
1849 C Street NW
Washington, DC 20240

Chief of the Forest Service
U. S. Department of Agriculture
4th Floor, N.W. Auditors Bldg.
1400 Independence Ave. SW
Washington, DC 20250-1111

Headquarters – Military Surface
Deployment &
Distribution Command
ATTN: Transportation Engineering Agency
(SDTE-SA)
Railroads for National Defense Program
1 Soldier Way
Scott AFB, IL 62225

49 C.F.R. § 1105.11 – Transmittal Letter for Applicant’s Report

The undersigned certifies that on July 31, 2020 (at least 20 days before this filing), a Combined Environmental and Historic Report pursuant to 49 C.F.R. § 1105.7 and 1105.8 was served in Docket No. AB-33 (Sub-No. 346X) on the following:

- (1) State Clearinghouse (or alternate)
- (2) State Environmental Protection Agency
- (3) Head of each County
- (4) U.S. Environmental Protection Agency, Regional Office
- (5) U.S. Fish and Wildlife Service
- (6) U.S. Army Corps of Engineers
- (7) National Park Service
- (8) U.S. Natural Resources Conservation Service
- (9) The National Geodetic Survey
- (10) Other Agencies Consulted (As Listed)
- (11) State Historic Preservation Office

(The Certificate of Service attached to Combined Environmental Historic Reports lists the names and addresses of the federal, state and local agencies.)

49 C.F.R. § 1105.12 – Newspaper Notice

The undersigned further certifies that a “Notice of Intent to Abandon and Discontinue Service” was published in the form prescribed by the Board for a Notice of Exemption (Copy Attached as **Attachment 2**). The Notice was published one time in a major newspaper in the county in which the Line is located as follows:

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Kootenai	Coeur d’Alene Press	August 26, 2020

Dated this 18th day of September, 2020

s/ Jeremy M. Berman

Jeremy M. Berman



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Attachment 1

August 21, 2020

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

Chief of the Forest Service
U. S. Department of Agriculture
4th Floor, N.W. Auditors Bldg.
1400 Independence Ave. SW
Washington, DC 20250-1111

National Park Service
1849 C Street NW
Washington, DC 20240

Headquarters – Military Surface Deployment &
Distribution Command
ATTN: Transportation Engineering Agency
(SDTE-SA)
Railroads for National Defense Program
1 Soldier Way
Scott AFB, IL 62225

**RE: Union Pacific Railroad Company--Abandonment Exemption--In Kootenai County, ID, STB
Docket No. AB-33 (Sub-No. 346X)**

Dear Sir or Madam:

Please be advised that Union Pacific Railroad Company ("UP") expects to file with the United States Surface Transportation Board ("STB"), on or after September 1, 2020, a Petition for Exemption seeking authority to abandon a portion line of railroad known as the Coeur D'Alene Industrial Lead in, located in Coeur D'Alene, in Kootenai County, Idaho, extending from Milepost 1.09 to Milepost 2.25, a distance of 1.16 miles (the "Line"). The Line traverses U.S. Postal Service Zip Codes 83854.

A Petition for Exemption to abandon service on the Line pursuant to 49 C.F.R. §1152.50 will be filed with the STB on or after September 1, 2020.

Based on information in UP's possession, the Line does not contain federally granted right-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

A map showing the segment of Line to be abandoned is attached for your information.

Sincerely,

/s/ Jeremy Berman

Jeremy Berman

UNION PACIFIC RAILROAD
1400 Douglas Street, 15th Floor
Omaha, Nebraska 68179

Jeremy Berman
General Attorney

P 402-544-4735
F 402-501-0129
E jmberman@up.com

AFFIDAVIT OF PUBLICATION

Attachment 2

STATE OF IDAHO)
) ss.
County of Kootenai)

Mary Moore, being first duly sworn upon oath, deposes and states:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press", a newspaper printed and published daily in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The Legal notice of which the annexed is a printed copy, was published in the regular Wednesday issue of said newspaper for 1 consecutive week commencing on the 26 day of August, 2020, and ending on the 26 day of August, 2020, and such publication was made as often during said period as said daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

Mary Moore.
On this 26 day of August in the year of 2020 before me, a Notary Public, personally appeared Mary Moore, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Katrina George
Notary Public for the State of Idaho
Residing in Coeur d'Alene, Idaho

My Commission Expires 8/29/23

NOTICE OF INTENT TO ABANDON RAIL SERVICE

UNION PACIFIC RAILROAD COMPANY (UP) GIVES NOTICE THAT ON OR AFTER September 1, 2020, it intends to file with the Surface Transportation Board, Washington, D.C., a petition for exemption under 49 U.S.C. § 10502 for the abandonment of a line of railroad known as the Coeur D'Alene Industrial Lead, located in Coeur D'Alene, Kootenai County, Idaho, extending from Milepost 1.09 to Milepost 2.25, a distance of 1.16 miles. The Line traverses U.S. Postal Service Zip Code 83854. The proceeding has been docketed as No. AB-33 (Sub-No. 346X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface Transportation Board, 395 E Street, SW, Washington, DC 20423 or by calling that office at (202) 245-0291.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails used also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of Proceedings, 395 E Street, SW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on the applicant's representative. [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (866) 254-1792. Copies of any comments or requests for conditions should be served on UP's representative: Jeremy M. Berman, General Attorney, 1400 Douglas St., STOP 1560, Omaha, NE 68179, 402-544-4735.

UNION PACIFIC RAILROAD COMPANY



CDA LEGAL 4070
AD# 4027/9
AUGUST 26, 2020



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Exhibit 3

July 31, 2020

VIA US Mail

TO: Attached Service List

**RE: Union Pacific Railroad Company--Abandonment Exemption--In Kootenai County, ID, STB
Docket No. AB-33 (Sub-No. 346X)**

To whom it may concern:

On or after August 20, 2020, Union Pacific Railroad Company ("UP") expects to be filing with the Surface Transportation Board ("STB" or "Board") a Petition for Exemption seeking authority to abandon a portion of the Coeur D'Alene Industrial Lead in Coeur D'Alene, Idaho, from Milepost 1.09 to Milepost 2.25, a distance of 1.16 miles in Kootenai County, Idaho (the "Line"). Attached is a Combined Environmental and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

Union Pacific is providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC, Telephone (202) 245-0291 and refer to the above Docket No. AB-33 (Sub-No. 346X). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to OEA (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Jeremy M. Berman who may be contacted by telephone at 402-544-4735 or by mail at 1400 Douglas St., Stop 1580, Omaha, NE 68179.

Sincerely,

s/ Jeremy M. Berman

Jeremy M. Berman

Attachment

UNION PACIFIC RAILROAD
1400 Douglas Street, 15th Floor
Omaha, Nebraska 68179

Jeremy Berman
General Attorney

P 402-544-4735
E jberman@up.com

Draft Federal Register Notice

**Docket No. AB-33 (Sub-No. 346X)
Notice of Petition for Exemption to Abandon**

On September XX, 2020, Union Pacific Railroad Company ("UP") filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a portion of the line of railroad known as the Coeur D'Alene Industrial Lead, extending from railroad milepost 1.16 to milepost 2.25, which traverses through United States Postal Service ZIP Codes 83854, a distance of approximately 1.16 miles, in the City of Coeur D'Alene, Kootenai County, Idaho.

The line does not contain federally-granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the labor protection conditions imposed in abandonment proceedings as prescribed in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 ICC 91 (1979).

Offers of financial assistance, 49 C.F.R. § 1152.27(c)(2), will be due no later than 10 days after service of a decision granting the petition for exemption.

Interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

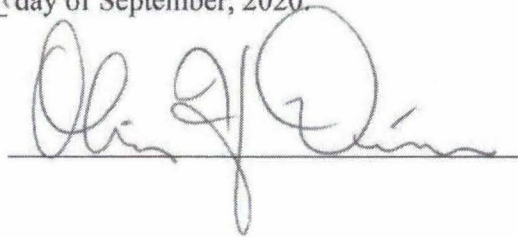
An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

VERIFICATION

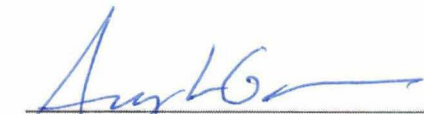
State of Nebraska)
) ss:
County of Douglas)

I, Olin H. Dirks, Manager – Commercial and Interline Strategy, for Union Pacific Railroad Company declare under penalty of perjury, under the laws of the United States of America, that I have read the forgoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company.

Dated at Omaha, Nebraska, this 10th day of September, 2020.



SUBSCRIBED AND SWORN TO
before me this 10th day of
September, 2020.



Notary Public

