



***SURFACE TRANSPORTATION BOARD***  
***Washington, DC 20423***

*Office of Environmental Analysis*

November 28, 2011

Reid Nelson, Director  
Advisory Council on Historic Preservation  
Office of Federal Agency Programs  
1100 Pennsylvania Avenue, NW, Suite 803  
Washington, DC 20004

Re: Docket No. AB 33 (Sub-No. 286X), Union Pacific Railroad Company –  
Abandonment Exemption – in Yakima County, Washington

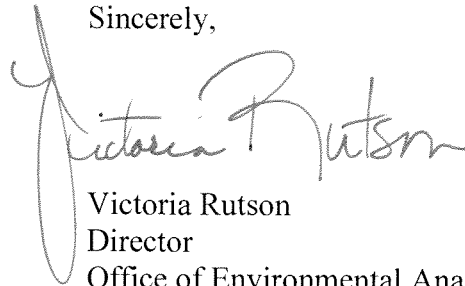
Dear Mr. Nelson:

On June 2, 2010, Union Pacific Railroad Company (UP) filed a notice of exemption with the Surface Transportation Board (Board) seeking approval authority to abandon an approximately 0.8-mile rail line in Yakima County, Washington. The Board's approval of the abandonment is considered an undertaking under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (NHPA) and is thus covered under its provisions. The Office of Environmental Analysis (OEA) is the office within the Board responsible for conducting the environmental review process pursuant to the National Environmental Policy Act, including the NHPA.

I am writing to notify you that OEA has executed a Memorandum of Agreement (MOA) with the Washington Department of Archeology and Historic Preservation (State Historic Preservation Office or SHPO) and UP to resolve any adverse effects to historic properties for the proposed undertaking pursuant to 36 C.F.R. § 800.6(b)(1)(iv). An original signed MOA is included for your files, and the filing of this document with the Advisory Council completes our compliance responsibilities under Section 106 of NHPA.

If you have any questions or require any additional information, please do not hesitate to contact me or Danielle Gosselin at (202) 245-0300.

Sincerely,

A handwritten signature in cursive script, reading "Victoria Rutson". The signature is written in dark ink and is positioned to the left of the printed name and title.

Victoria Rutson  
Director  
Office of Environmental Analysis

Enclosure

cc: Najah Duvall-Gabriel, Advisory Council  
Gregory Griffith, Washington SHPO  
Andrew Schmidt, Union Pacific  
Warren Hurley, Bureau of Reclamation

**MEMORANDUM OF AGREEMENT BETWEEN  
THE SURFACE TRANSPORTATION BOARD,  
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER,  
AND THE UNION PACIFIC RAILROAD COMPANY**

**REGARDING DOCKET NO. AB 33 (SUB-NO. 286X)  
UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN YAKIMA COUNTY, WASHINGTON**

**WHEREAS**, on June 2, 2010, Union Pacific Railroad Company (UP) filed a notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152, Subpart F, seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 0.8-mile rail line between milepost 62.75 and milepost 63.55, near Midvale, Yakima County, Washington, in Docket No. AB 33 (Sub-No. 286X); and

**WHEREAS**, in a decision served on July 19, 2010, the Board imposed a condition for the proposed abandonment that requires UP to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA); and

**WHEREAS**, the Board has determined that the rail line abandonment constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and

**WHEREAS**, for abandonments, the railroad right-of-way is the area of potential effects, defined at 36 C.F.R. § 800.16(d) as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.” In this case, the right of way is 75 feet wide, with the track on center; and

**WHEREAS**, the rail line crosses over the Sulphur Creek wasteway on a bridge at milepost 62.92 (Bridge 62.92), and the Sulphur Creek channel is owned by the United States Bureau of Reclamation (BOR) and operated by the Sunnyside Valley Irrigation District; and

**WHEREAS**, based on the recommendation of a qualified historical consultant and in consultation with the Washington Department of Archaeology and Historic Preservation (State Historic Preservation Office or SHPO), the Board determined that Bridge 62.92 is eligible for listing in the National Register of Historic Places (National Register), pursuant to 36 C.F.R. § 800.4; and

**WHEREAS**, UP proposes to remove and salvage Bridge 62.92 in conjunction with the proposed abandonment. The Board consulted with the SHPO pursuant to 36 C.F.R. § 800.5, and determined that the proposed abandonment will have an adverse effect on Bridge 62.92; and

**WHEREAS**, the SHPO, in a letter dated April 19, 2011, concurred with the Board's determination of adverse effect; and

**WHEREAS**, in a letter dated April 19, 2011, the Board notified the Advisory Council on Historic Preservation (ACHP) that an adverse effect determination had been made in accordance with 36 C.F.R. § 800.6(a)(1); and

**WHEREAS**, in a letter dated May 9, 2011, the ACHP declined to participate in the negotiation of this Memorandum of Agreement (MOA); and

**WHEREAS**, the Board and SHPO have agreed that BOR should be invited to participate as a Section 106 consulting party pursuant to 36 C.F.R. § 800.6(a)(2). Accordingly, the Board invited BOR to so participate in the MOA process by e-mail dated May 31, 2011, and BOR accepted the invitation by e-mail dated June 10, 2011; and

**WHEREAS**, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO and BOR regarding ways to avoid, minimize, or mitigate potential effects to the historic resource as a result of the proposed abandonment, and the Board, SHPO and BOR have all agreed upon the measures described below under "Stipulations;" and

**WHEREAS**, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

**NOW, THEREFORE**, the Board, SHPO, and BOR agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties. The execution of this MOA by the parties hereto and its subsequent submission to the ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(1) of the NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

## **STIPULATIONS**

The Board shall ensure that the following measures are carried out:

### **I. MITIGATION**

As mitigation for removal of Bridge 62.92, UP shall complete photographic and written documentation for the property and shall install barriers subject to the provisions outlined below. Once the photographic and written documentation has been approved by SHPO, the Board will

notify UP that it may commence with the removal of the bridge. The actions that implement this MOA shall include the following:

**A. Recordation of Historic Properties:**

1. Prior to removal of any portion of Bridge 62.92, UP shall complete Historic American Engineering Record (HAER) Level III documentation that meets the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation, HABS/HAER Standards* (Standards).
  - a. UP shall complete photographic documentation of Bridge 62.92. This documentation shall be produced in compliance with the minimum camera requirements set forth in the federal standards for HABS/HAER referenced above and shall consist of large format (4x5 negative size) professional black and white photography, including a photo index.
  - b. UP shall submit a xerographic copy of the photographic documentation to SHPO for review; pending SHPO approval, one complete set of photographic documentation with contact prints and original negatives will be prepared.
2. UP's architectural historian shall complete a written historical and descriptive report according to the "Outline Format" of the National Park Service Guidelines for HABS/HAER documentation. The report should include a detailed description of the bridge and a brief discussion of the contextual history of the bridge to the extent available to UP. The SHPO shall approve this written history in writing prior to completion of this portion of the documentation.

**B. Installation of Barriers:**

1. In order to protect the structural integrity of the Sulphur Creek channel, the footings, stem walls, and wing walls of Bridge 62.92 shall to be left in place.
2. UP shall place barriers east and west of the removed bridge to prevent accidental access to the Sulphur Creek channel by the general public or adjoining landowners. The barriers shall be placed 25 feet from the top of bank so access roads can be maintained on both sides of the channel.

**II. STANDARDS**

**A. Professional Qualifications:** All historic preservation activities implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Professional Qualification Standards in the Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44738-44739).

**III. REPORTING REQUIREMENTS**

UP shall compile the final HABS/HAER photographic and written documentation and submit it to the SHPO within one year of the execution of this MOA. The SHPO shall determine if the documentation is complete and notify the Board of its completeness determination.

**A. Comment Period:** UP shall complete the photo and written documentation and submit a draft report to SHPO for review. The SHPO will have 30 days to comment on the documentation. UP shall modify the report in accordance with any SHPO comments provided within the comment period. Failure of SHPO to comment within the specified period shall be deemed by the Board to constitute SHPO approval of the documentation.

**B. Distribution of Final Documentation:** UP shall submit the final documentation package, including negatives, contact prints, and written report, to the SHPO. UP shall submit xerographic copies of the documentation to the Board, BOR and to the Yakima Valley Museum.

#### **IV. DURATION**

This MOA will expire if the terms of this MOA have not been implemented by July 31, 2013. At such time, and prior to work continuing on the Undertaking, the Board shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below. The Board shall notify the signatories as to the course of action it will pursue.

#### **V. UNANTICIPATED DISCOVERIES**

If the Board determines after bridge removal has commenced, that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, the Board will address the discovery in accordance with 36 C.F.R. § 800.13(b)(3). The Board may assume the discovered property to be eligible for the National Register in accordance with 36 C.F.R. § 800.13(c).

#### **VI. DISPUTE RESOLUTION**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

**A.** Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the ACHP. The ACHP shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring

parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.

**B.** If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

**C.** The Board's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

## **VII. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## **VIII. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

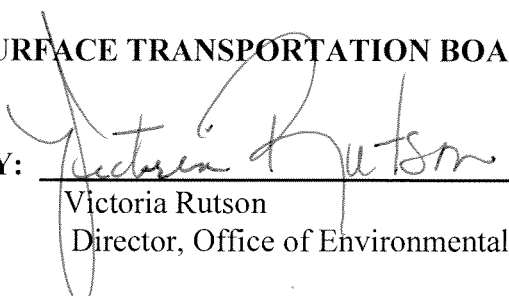
Once the MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

**EXECUTION** of this MOA by the Board and SHPO and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

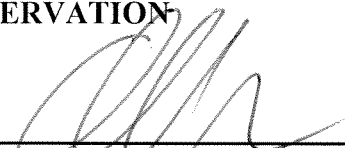
**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

BY:  DATE: 10-5-11  
Victoria Rutson  
Director, Office of Environmental Analysis

**WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION**

BY:  DATE: 10/11/11  
Allyson Brooks  
State Historic Preservation Officer

**UNITED STATES BUREAU OF RECLAMATION**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
William D. Gray  
Area Manager, Columbia-Cascades Area Office

**UNION PACIFIC RAILROAD COMPANY**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Darin J. Bair  
Manager Special Projects/Assets

**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

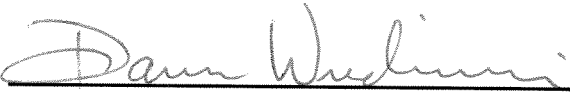
Victoria Rutson  
Director, Office of Environmental Analysis

**WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Allyson Brooks  
State Historic Preservation Officer

**UNITED STATES BUREAU OF RECLAMATION**

**BY:**  **DATE:** 9/19/11

Bureau of Reclamation  
Area Manager, Columbia-Cascades Area Office

**UNION PACIFIC RAILROAD COMPANY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Union Pacific

**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Victoria Rutson  
Director, Office of Environmental Analysis

**WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Allyson Brooks  
State Historic Preservation Officer

**UNITED STATES BUREAU OF RECLAMATION**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Bureau of Reclamation

**UNION PACIFIC RAILROAD COMPANY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Union Pacific  
Manager special projects/Assets