

Law Department

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

FEE RECEIVED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**



DTD # 0102050001

October 18, 2002



Via UPS Overnight

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

206455

ENTERED
Office of Proceedings

OCT 21 2002

Part of
Public Record

RE: Finance Docket No. 34252 - Union Pacific Railroad Company -
Operation Exemption - In Yolo County, California

Dear Mr. Williams:

Enclosed for filing in the above proceeding are the following materials:

1. An original and ten (10) copies of UP's Verified Notice of Exemption.
2. An original and ten (10) copies of a Certificate of Compliance with 49 C.F.R. §§1150.32(e) and 1150.35(c).
3. 11 copies of the caption summary required by 49 C.F.R. §1150.34.
4. A diskette containing the documents described in 1-3 above in WordPerfect 9.0.
5. A check in the amount of \$1,300 for the filing fee required by 49 C.F.R. §1002.2a(f)(II)(ii).

Please acknowledge receipt of the above matters on the additional copy of the letter provided for this purpose and return it to me in the enclosed, self-addressed envelope.

Very truly yours,

Robert T. Opal
General Commerce Counsel

FILED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**

cc: Persons shown on Certificate of Service

Encs.

Contains Color Images

ORIGINAL

DID# 0102050001

BEFORE THE
SURFACE TRANSPORTATION BOARD

FEE RECEIVED

OCT 21 2002

SURFACE
TRANSPORTATION BOARD



FINANCE DOCKET NO. 34252

UNION PACIFIC RAILROAD COMPANY
- OPERATION EXEMPTION -
IN YOLO COUNTY, CALIFORNIA

UNION PACIFIC RAILROAD COMPANY
VERIFIED NOTICE OF EXEMPT
PURSUANT TO 49 C.F.R. PART 1150, §

FD 34252

*Notice of Exemption
Original + 10
copies*

ENTERED
Office of Proceedings

OCT 21 2002

Part of
Public Record

UNION PACIFI

Robert T. Opa
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

Dated: October 18, 2002

Filed: October 21, 2002

FILED

OCT 21 2002

SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34252

**UNION PACIFIC RAILROAD COMPANY
– OPERATION EXEMPTION –
IN YOLO COUNTY, CALIFORNIA**

**UNION PACIFIC RAILROAD COMPANY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**



This Verified Notice of Exemption is filed on behalf of Union Pacific Railroad Company ("UP") pursuant to 49 C.F.R. Part 1150, Subpart D. The transaction covered by this notice is the operation by UP, as a common carrier, of approximately 6.3 route miles owned by the Sacramento-Yolo Port District ("Port") and by UP in Yolo County, California, as more particularly described below.

UP is currently operating over the subject trackage as exempt industrial trackage. The effect of this transaction will be to change the legal status of these operations to regulated common carrier service. No changes in operations are anticipated as a result of this transaction.

This notice of exemption is supported by Farmers Rice Cooperative ("FRC"), the principal shipper served from the Port trackage involved in this proceeding. A

§1150.33(d) Operator of the Property.

UP will be the operator of the property covered by this transaction.¹

§1150.33(e) Summary of Proposed Transaction.

UP and its predecessors have operated over subject Port trackage covered by this transaction since the early 1950's and the subject UP trackage since 1966. The purpose of this transaction is to change the legal status of UP's operations on this track to that of a regulated common carrier. Currently, UP operates over this track as exempt industrial track under 49 U.S.C. §10906.

This transaction is being undertaken in response to attempts by Yolo Shortline Railroad Company ("YSLR") to force a discontinuance of UP services over the Port trackage. In Finance Docket No. 34114, Yolo Shortline Railroad Company - Lease and Operation Exemption - Port of Sacramento (served November 10, 2001), YSLR obtained an exemption to lease and operate certain Port trackage (including trackage involved in the instant transaction). While YSLR's notice of exemption (which was not served on UP) disclosed that YSLR was seeking to become the "exclusive" railroad serving this trackage, it did not disclose the YSLR's planned forced discontinuance of UP's service.²

The reality was that the YSLR transaction was intended from the outset to be a forced discontinuance of UP's services. On November 16, 2001, shortly after the exemption became effective, YSLR sent a letter to UP purporting to terminate two

¹ Currently, Yolo Shortline Railroad Company ("YSLR") also has contractual rights to operate over some of the Port trackage (but not the UP trackage) pursuant to an agreement dated October 10, 2001, between YSLR and the Port, and the exemption YSLR obtained in Finance Docket No. 34114 discussed above.

² §§10901 and 10902 transactions very commonly result in the acquisition of "exclusive" rights by the acquiring carrier. They do not commonly result in a forced discontinuance of the incumbent's carrier's service.

agreements which gave UP the right to serve industries from the Port-owned trackage, which is to become fully effective on November 16, 2002.³ The effect of YSLR's actions would be to insert YSLR as an expensive and unwanted middleman on traffic moving between UP and Port area customers, particularly Farmers Rice Corporation ("FRC"), the principal shipper that will be affected by discontinuance of UP service. As described in the accompanying statement of FRC's Curt Graham, this will simply increase FRC's transportation costs. The instant transaction, by changing the legal status of UP's operations over the track to that of a regulated common carrier, is intended to prevent YSLR from unilaterally terminating any of UP's existing service. See, e.g., Thompson v. Texas Mexican R. Co., 328 U.S. 134, 147 (1946).

The information shown above is presented solely to give the Board full disclosure of the reasons for the instant transaction and its intended effect. UP is not seeking to have the Board resolve any issues in the instant proceeding as to the propriety of YSLR's exemption in Finance Docket No. 34114. To address those issues, UP is simultaneously filing a petition to revoke YSLR's exemption in Finance Docket No. 34114.

³ The two agreements were (i) a May 24, 1950, agreement between the Port and Sacramento Northern Railway ("SN"), and (ii) a February 12, 1951, agreement between the Port and Southern Pacific Company ("SP"). A third agreement between the Port, SN and SP dated September 1, 1966, which gives UP the right to bridge over Port trackage to reach UP-owned track serving the West Sacramento Port Center. The 1966 agreement was not included in YSLR's purported termination, probably because the agreement has a 50-year term that runs to 2016, and cannot be unilaterally terminated earlier.

§1150.33(e)(1) Name and Address of Railroad Transferring the Subject Property.

Not applicable. The properties are either owned by the Port, a non-common carrier, or are already owned by UP.

§1150.33(e)(2) Proposed Consummation Date.

UP currently anticipates that it will consummate this transaction on or about November 11, 2002.

§1150.33(e)(3) Mileposts.

The trackage covered by this transaction extends (i) from point of connection between Port and UP trackage near milepost 1.61 (east of the intersection of Jefferson and Stone Boulevards) in West Sacramento, California, extending to the end of the Port trackage near former SP milepost 92.8, including access to all connecting spur, industrial, team, switching and side tracks ("Auxiliary Trackage"), and (ii) over UP-owned trackage serving the West Sacramento Port Center beginning at the division of ownership between Port and UP trackage near milepost 2.32 (Stone Boulevard) to the end of the UP trackage near milepost 5.70, including access to all connecting Auxiliary Trackage. See map attached as Exhibit A.

§1150.33(e)(4) Total Route Miles.

The total route mileage of the trackage involved in this transaction is approximately 6.3 miles (excluding Auxiliary Trackage). None of this trackage is technically being "acquired" by UP in this transaction.

§1150.33(f) Map.

A map showing the trackage covered by this transaction is attached as Exhibit A to this notice.

§1150.33(g) Certification of Class III Status.

Not applicable.

§1150.35(b)(1) General Statement of Service Intentions.

UP and its predecessors (SP and SN) have been providing service over the subject Port trackage since 1950 and over the subject UP trackage since 1966. UP currently provides five-day per week service.

UP does not anticipate any change in current operations as a result of this transaction. As noted above, a major purpose of this transaction is to prevent YSLR from forcing a discontinuance of UP's operations over the subject trackage.

§1150.35(b)(2) General Statement of Labor Impacts.

UP anticipates that there will be no labor impacts as a result of this transaction. As discussed above, the effect of the transaction will simply be to change the legal status of UP's existing operations over the subject trackage, not the operations themselves.

§1150.32(e) Advance Employee Notice

On September 11, 2002, UP posted and served "60-day notice" required by 49 C.F.R. §1150.32(e). See accompanying Certificate of Compliance with 49 C.F.R. §§1150.32(e) and 1150.35(c).

§1150.35(d) Notice of Intent Requirements

On October 1, 2002, UP served on the parties specified by 49 C.F.R. §1150.35(c) a notice of intent containing the information specified in 49 C.F.R. §1150.35(b). See accompanying Certificate of Compliance with 49 C.F.R. §§1150.32(e) and 1150.35(c).

§1105 Environmental and Historical

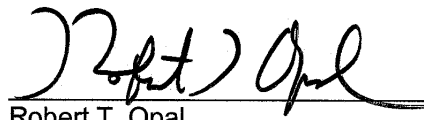
This transaction is exempt from environmental reporting requirements under §1105.6(c)(2) as the transaction will not result in significant changes in carrier operations (i.e., charges that exceed the thresholds established in 49 C.F.R. §§1105.7(e)(4) or (5).

This transaction is also exempt from historic reporting requirements under 49 C.F.R. §1105.8(b)(1). The transaction simply changes the legal status of UP's existing operations over the subject trackage. Further, as a direct result of this transaction, any abandonment of the UP track covered by this transaction, or discontinuance of UP service over the Port track covered by this transaction (either voluntary or involuntary), would require STB approval or exemption under 49 U.S.C. §10903, et seq.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:



Robert T. Opal
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of UP's Verified Notice of Exemption
and UP's Certificate of Compliance with 49 C.F.R. §§1152.32(e) and 1150.35(b) in
Finance Docket No. 34252 upon the following:

David McGaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 95776-6012

John G. Sulpizio
Port Director
Port of Sacramento
3251 Beacon Blvd., Suite 210
West Sacramento, CA 95798-0070

Curt Graham
Farmers Rice Cooperative
2525 Natomos Park Drive
Sacramento, CA 95833-2927

Service was made by UPS Overnight with postage prepaid.

Dated at Omaha, Nebraska, this 18th day of October, 2002.


Robert T. Opal

CAPTION SUMMARY

FINANCE DOCKET NO. 34252

**UNION PACIFIC RAILROAD COMPANY
– OPERATION EXEMPTION –
IN YOLO COUNTY, CALIFORNIA**

Union Pacific Railroad Company ("UP") has filed a notice of exemption to operate, as a common carrier, over approximately 6.3 miles of track owned by the Sacramento-Yolo Port District ("Port") and by UP in Yolo County, California. The track extends (i) from point of connection between Port and UP trackage near milepost 1.61 (east of the intersection of Jefferson and Stone Boulevards in West Sacramento, CA, extending to the end of the Port trackage near former SP milepost 92.8, including access to all connecting industrial, team, switching, and side tracks ("Auxiliary Trackage"), and (ii) over UP-owned trackage beginning at the division of ownership between Port and UP trackage near milepost 2.32 (Stone Boulevard) to the end of UP trackage near milepost 5.70, including access to all connecting auxiliary trackage. UP currently provides service over all of the subject trackage as exempt industrial trackage pursuant to 49 C.F.R. §10906. The effect of this transaction will be to change the legal status of UP's operation on this trackage to that of a regulated common carrier.

Comments must be filed with the Board and served on UP's representative: Robert T. Opal, General Commerce Counsel, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

This notice is filed under §1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.



**DECLARATION
OF
CURT GRAHAM**

My name is Curt Graham. I am Manager Marketing Services for Farmers' Rice Cooperative in Sacramento, California. Among other things, I am responsible for transportation of the products sold by FRC.

FRC is a rice marketing cooperative which processes and markets approximately $\frac{1}{4}$ of all the rice grown in California. Approximately 70 percent of the rice processed by FRC is marketed domestically with the remainder exported. The key to FRC's ability to compete in domestic and world markets is being as efficient as possible, and constantly striving to improve on that position. Our viability in these highly competitive markets is linked to vital transportation services that include rail, port and truck access. Our ability to be an effective competitor, as well as a solid employer adding value to the community, would be severely limited without economical transportation services.

FRC's facilities are located on a 26-acre industrial site adjacent to the Port of Sacramento. These include two state-of-the-art rice mills, referred to as Mill No. 1 and Mill No. 2. Each of these mills is served by separate rail spurs. The spur serving Mill No. 1 branches off of the track owned by the Port of Sacramento, while the track serving Mill No. 2 branches off of the track owned by Union Pacific.

Both of the FRC mills are currently served by Union Pacific, which provides 5-days per week service. UP handles both its own traffic and traffic for BNSF, which obtained access to FRC in the UP-SP merger. We consider UP's service to be responsive to our shipping requirements, and we have no desire to see UP replaced as a serving carrier at either mill.

FRC is deeply concerned about changes to rail service to our mills arising from an agreement in the late 2001 between the Port and Yolo Short Line. We understand that this agreement gave YSL control over the Port tracks. This had an immediate adverse effect on FRC, as YSL took away track that Union Pacific had been using to switch our cars and filled those tracks with stored tank cars. It is our understanding that these stored tank cars have nothing to do with any traffic of Port area shippers.

This situation is going to quickly become much worse. We understand that YSL is attempting to terminate UP's right to use the Port track to serve Mill No. 1 in November. This means that YSL will be switching the spur track serving Mill No. 1 while UP will continue to switch the spur serving Mill No. 2. YSL has published a charge of \$200 per car for this service. This is the same service we have been receiving from Union Pacific at no additional charge. We cannot shift our rail shipments to Mill No. 2 to avoid YSL's charge as the two mills handle different grades of products from different bins. As a result, all of our Mill No. 1 traffic will be subject to the new YSL charge. The YSL service from a cost standpoint is not justifiable, and adding this carrier into the mix is not going to improve efficiency at all. YSL is simply going to be a hindrance to our ability to be competitive.

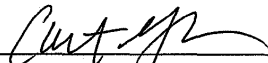
I should point out that the YSL transaction was a complete surprise to FRC. Even though FRC is one of the largest companies in the Port area, neither the Port nor YSL advised us prior to their transaction that they were going to prevent UP from switching Mill No. 1. They did not even advise us that they were considering such a change. It was only after they completed their transaction that we learned what they had done, and realized what the effects were likely to be. We have had several discussions with YSL since the transaction, and we don't feel that YSL has responded to our business needs in a positive manner.

Accordingly, FRC strongly supports UP's efforts in Finance Docket Nos. and to maintain its ability to serve FRC's facilities. The termination of UP service would seriously impact FRC.

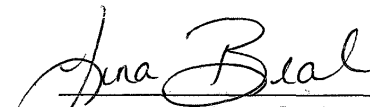
DECLARATION

Curt Graham, states under penalty that the foregoing statement is true and correct.

Executed October 15, 2002


Curt Graham

Witnessed By


Tina Beal