



ET 3124
Mack H. Shumate, Jr.
Senior General Attorney, Law Department

August 7, 2007

E-Docket Filing

Mr. Vernon Williams, Secretary
Surface Transportation Board
395 E Street, S.W. Room 1149
Washington, D.C. 20423-0001

Re: Request to Remove Section 106 Condition regarding Proposed Abandonment of a portion of the Sunset Subdivision near between Levee, Milepost 18.3 and Taft at Milepost 36.3, for a total Distance of 18 miles in Kern County, California; STB Docket No. AB-170(Sub-No. 1X);

AND

Request to Remove Section 106 Condition regarding Proposed Abandonment of a portion of the Sunset Subdivision near Levee between Milepost 19.80 and Milepost 20.00 in Kern County, California; STB Docket No. AB-170(Sub-No. 2X)

Dear Mr. Williams:

Attached hereto as Exhibit A and hereby made a part hereof is a letter dated August 1, 2007 from the State Historic Preservation Officer for the State of California ("SHPO") concerning the above-referenced matters. The letter indicates that the Union Pacific has consulted with the SHPO in order to comply with Section 106 of the National Historic Preservation Act and implementing regulations codified at 36 CFR Part 800. The SHPO further indicates that given the fact that the salvaging of the Line has been completed the SHPO cannot comment on the effects of the salvaging process may have had on historic properties. A copy of Union Pacific's memorandum to the SHPO explaining the circumstances which led to the salvaging of the Line is attached hereto as Exhibit B and is hereby made a part hereof.

August 7, 2007
Mr. Vernon Williams, Secretary
Surface Transportation Board

Based on this information, Union Pacific respectfully requests that the Surface Transportation Board amend the orders in the above-referenced matters to reflect that the Section 106 Process Condition has been satisfied and that consummation notices of the abandonments may now be filed.

Sincerely,

A handwritten signature in black ink, appearing to be "M. L. H. C.", written in a cursive style.

Enclosures

cc: Kenneth Bloddgett ✓

O:\ABANDONMENTS\170-2x\STB2-Ltr

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



August 1, 2007

Reply To: STB070514A

Mack H. Shumate, Jr.
Union Pacific Railroad
101 N Wacker Drive, Room 1920
Chicago, IL 60606-1718

Re: Section 106 Consultation for Docket No. AB-170 (Sub-No. 1X) and AB-398 (Sub-No. 9X) and Docket No. AB-170 (Sub-No. 2X) and AB-398 (Sub-No. 10X), Kern County, CA

Dear Mr. Shumate:

You have provided me, on behalf of the Surface Transportation Board (STB), with information regarding how the above project may affect historic properties. You have done this, and are consulting with me, in order to enable the STB to comply with Section 106 of the National Historic Preservation Act and implementing regulations codified at 36 CFR Part 800.

Given that the project has already completed construction, I cannot comment on the effects this project may have on historic properties.

If you have any questions, please contact Natalie Lindquist of my staff at (916) 654-0631 or e-mail at nlindquist@parks.ca.gov.

Sincerely,

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

RECEIVED

AUG 07 2007

LAW DEPARTMENT
UNION PACIFIC RR CO



Mack H. Shumate, Jr.
Senior General Attorney, Law Department

May 11, 2007

Natalie Lindquist
Historian II
California Office of Historic Preservation
Department of Parks and Recreation
1416 Ninth Street, Room 1442
Sacramento, CA 95814

**Re: Section 106 Consultation for Docket No. AB-170(Sub-No. 1X)
and AB-398(Sub-No. 9X); Sunset Railway Company Abandonment
Exemption and San Joaquin Valley Railroad Company
Discontinuance Exemption, Kern County, California (the "1X Line")**

**Section 106 Consultation for Docket No. Ab-170(Sub-No. 2X)
and AB-398(Sub-No. 10X), Sunset Railway Company Abandonment
Exemption and San Joaquin Valley Railroad Company
Discontinuance Exemption, Kern County, California (the "2X Line")**

Dear Ms. Lindquist:

This letter is submitted in accordance with our telephone conversation of approximately a week and a half ago concerning the above-referenced matters. The Union Pacific Railroad Company ("UP") and the Burlington Northern Santa Fe Railroad ("BNSF") are the joint owners of the Sunset Railway Company ("SRY"). The San Joaquin Valley Railroad Company ("SJVR") by agreement with the SRY, which was approved by the Surface Transportation Board ("STB"), operates as the common carrier over the two railroad lines referenced above, the 1X Line and the 2X Line which are collectively known as the Sunset Subdivision (the "Sunset Subdivision"). The two abandonment exemption filings cover different portions of the Sunset Subdivision.

The first Notice of Exemption for discontinuance of operations by SJVR and abandonment by SRY is for the 16.3 mile portion of the Sunset Subdivision referred to herein as the 1X Line extending between milepost 20.00 west of Levee and milepost 36.3 at Taft in Kern County, California, which was decided by the STB on December 14, 2004.



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Natalie Lindquist
Historian II
California Office of Historic Preservation
Department of Parks and Recreation
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The second Notice of Exemption for discontinuance of operations by SJVR and abandonment by SRY is for the 0.20 mile portion of the Sunset Subdivision referred to herein as the 2X Line extending between milepost 19.80 and milepost 20.00 near Levee in Kern County, California, which was authorized by the STB on April 18, 2005.

In both abandonments at the time the STB decided the matter, the California Office of Historic Preservation, Department of Parks and Recreation ("SHPO") had not yet completed its assessment of the potential impact of the proposed abandonments on historic resources.

By letters dated February 16, 2006 in AB-170(Sub-No.1X) and February 17, 2006 in AB-170(Sub-No.2X) the UP indicated on behalf of SRY that the UP had received notice from the SHPO that the UP had satisfied the conditions, if any, regarding the Section 106 Process of the National Historic Preservation Act under 16 U.S.C. 470F (NHPA). This representation by the UP to the STB was based on email communications between Don Snoddy, Senior Historian for the UP and Steve Mikesell and Natalie Lindquist of the California Office of Historic Preservation. Copies of the February 16, 2006 and February 17, 2006 filings by the UP on behalf of SRY with the emails are attached hereto as Exhibits "1" and "2", respectively.

Mr. Kenneth Blodgett of the Section of Environmental Analysis for the STB contacted this office approximately one week after the February 2006 filings were made and indicated that upon review of the attached email communications between UP's Don Snoddy and the SHPO that it would be preferable to have the written authorization on the official letterhead of the SHPO that the Section 106 Process had been satisfied. For the next year, the UP attempted to secure such letter through the efforts of Don Snoddy with the SHPO. Upon review of its file, the SHPO indicated to Mr. Snoddy that it was unable to verify that it had, in fact, approved the 106 Process for the longest length of the subject abandonment, the 1X Line. This came as a surprise to the UP in that it was acting in accordance with UP's understanding that the Section 106 Process was, in fact, approved and that only administrative written verification was necessary.

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Natalie Lindquist
Historian II
California Office of Historic Preservation
Department of Parks and Recreation
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These two abandonments are unique in that neither the UP nor the BNSF are technically parties to the proceedings. As stated previously, UP and BNSF are joint owners of SRY and SRY as the common carrier is the corporate person responsible for obtaining authority to abandon the subject 1X Line and 2X Line. The matter is further complicated by the fact that the STB authorized railroad operations on the subject lines were with the tenant operator SJVR. SJVR's counsel, Louis Gitomer, filed the applicable Environmental and Historic Reports in accordance with the federal regulations governing notices of exemption for abandonment.

UP was unaware of the two (2) letters from the SHPO replying to the STB's request for an assessment of the potential impact of the abandonments on historic resources in the state of California. The first SHPO letter was dated February 23, 2005, applied to AB-170(Sub-No. 1X) and AB-398(Sub-No.9X), and was addressed to Ken Blodgett at the STB. The second SHPO letter covering the smaller abandonment AB-170(Sub-No.2X) and AB-398(sub-No.10X) was dated March 22, 2005, and was sent to Louis Gitomer with a carbon copy to Victoria Rutson of the Environmental Section of the STB. These letters are attached hereto as Exhibits "3" and "4", respectively. The UP was first made aware of the existence of the SHPO letters on April 6, 2007 by an email from Lou Gitomer to myself.

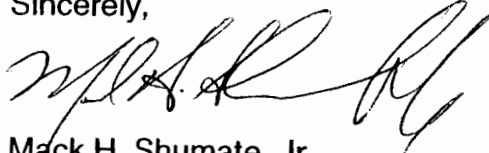
For these abandonments the UP followed the BNSF practice of completing all salvage operations before consummating the abandonment. The reason for this process is to assure salvage of useable rail, ties and other track material that may be located on property which may be subject to a reversionary interest belonging to the owner of the underlying fee estate. **On the mistaken belief that the 106 Process for the subject abandonments had been fulfilled, the UP hired an independent contractor to salvage the 1X Line and 2X Line and remove all bridges. The salvaging of the lines and removal of the bridges was substantially completed several months ago.**

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California Office of Historic Preservation
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It is impossible for the salvage contractor and the UP to restore any historic property which may have existed prior to the salvaging process. Attached hereto as Exhibit "5" is a copy of the Historic Report filed by Mr. Gitomer on behalf of the SJVR and SRY covering the 1X Line and the 2X Line. This report indicates that the only historic structures that were located on the line consisted of timber pile bridges and metal deck bridges with timber piles, some of which were over 50 years in age. Based on UP's observations, the bridges in question are not unique.

Immediately upon the realization that the Section 106 Process had not been fully completed regarding the subject abandonments, the UP contacted the offices of SHPO and explained the situation and the dilemma. Both the UP and the BNSF desire to consummate the abandonments for the 1X Line and the 2X Line on behalf of the SRY and respectfully request that the SHPO make a filing with the STB in both of the subject abandonments referenced above that would permit the STB to issue an amended order authorizing the SRY to consummate both abandonments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", written in a cursive style.

Mack H. Shumate, Jr.

Enclosures