

D. Diane Dillard
Attorney at Law
5460 Paredes Line, Suite 206
Brownsville, TX 78526
956-346-3001
diane-dillard@att.net

233740
233741
ENTERED
Office of Proceedings
January 29, 2013
Part of
Public Record

January 29, 2013

VIA E-FILE

The Honorable Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Petition for Issuance of Public Use Condition, Interim Trail Use Condition and for Railbanking for two proposed abandoned connecting lines of railroad.

- (1) UP Docket AB 33 (Sub-No. 306X) - Union Pacific Railroad Company ("UP") – Abandonment and Discontinuance Exemption – in Cameron County, Tex.
- (2) Docket AB 1091X - Brownsville and Matamoros Bridge Company ("B&M Bridge") – Abandonment Exemption – in Cameron County, Tex.

Dear Ms. Brown;

I have been hired by the City of Brownsville, Texas, a Texas Home Rule Municipality (hereinafter referred to as "City"), to represent the City in connection with the matter described above. The City previously filed a request in this matter with you on September 4, 2012. Since that time, the City received notice that the Surface Transportation Board has instituted an exemption proceeding pursuant to 49 U.S.C. § 10502(b), and that all filings in response to the notice must be filed on or before January 29, 2013. Out of an abundance of caution, the City is filing its Petition again.

City requests the issuance of a Public Use Condition (under 49C.F.R. §11152.28) and an Interim Trail Use Condition, and Railbanking (under 49C.F.R. §11152.29), rather than an outright abandonment authorization for the entire length of railway to be abandoned by UP and B&M Bridge as set forth in **UP Docket AB 33 (Sub-No. 306X)** and **B&M Bridge Docket AB 1091X**; or as set forth as follows:

FILING FEE WAIVED

(1) Union Pacific Brownsville Subdivision from Milepost 7.4 at Olmito Junction to Milepost 0.22 at Brownsville, Tex (“UP’s Brownsville Subdivision”); and

(2) Brownsville and Matamoros Bridge Company Bridge Line from its connection to UP’s Brownsville Subdivision near Union Pacific milepost 0.41 to the International Border with Mexico located near the center-point of the B&M Bridge at Brownsville (“B&M Bridge Line”), a total distance of 7.98 miles in Cameron County, Tx. (collectively the “Line”).

The “Line” traverses the United States Postal Service ZIP code 78520 and includes no stations.

I. Request for Public Use Condition

The City is asking the Surface Transportation Board to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

A. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms.

Justification for this condition is that the corridor will make an excellent recreational trail; and conversion of the Line to trail use is in accordance with local plans. The incidence rate of diabetes in Brownsville is one of the highest rates in the country. The City is working hard to promote exercise to improve the health of the citizens of Brownsville. The availability of this corridor for a bicycle commuter/recreation trail will greatly help the City promote healthy activities that are free to the public. In addition, the corridor provides important wildlife habitat and green space, and its preservation, as a bicycle commuter/recreation trail is consistent with that end. The time period sought is 180 days from the effective date of the abandonment authorization. The City needs this much time to assemble and to review title information, complete a trail plan, commence negotiations with the carriers, and solicit program funding through local and state transportation sources or private interests.

B. An order barring removal or destruction of potential trail-related structures such as any bridges, trestles, culverts and tunnels.

The justification for this condition is that such structures located on the Line will have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization. The City needs this much time to assemble or to review title information, complete a trail plan, commence negotiations with the carriers, and solicit program funding through local and state transportation sources or private interests.

II. Request for Interim Trail Use and Railbanking

The City is asking the Surface Transportation Board to find that this property is suitable for interim trail use and railbanking.

In addition to the public use conditions sought above, the City also is proposing the following:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

- A. In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 CFR §1152.29, the City is willing to assume full responsibility for the management of and for any legal liability arising out of the transfer or use of the Line and will indemnify UP and B&M Bridge against any potential liability, and for the payment of any and all taxes that may be levied or assessed against the Line.
- B. The property known as the Line is actually two connecting lines of railroad, which combine for a total distance of 7.98 miles in Cameron County, Tex. The Line is the property proposed for abandonment in STB Docket AB 33(Sub-No. 306X) and STB Docket AB 1091X.
- C. A map depicting the right-of-way is attached.

The City acknowledges that its use of the Line is conditioned upon the City's continued performance of its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I also certify service upon Union Pacific Railroad Company, Attn: Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920 Chicago Illinois 60606-1718 and on the Brownsville & Matamoros Bridge Company Attn: Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920 Chicago Illinois 60606-1718 by First Class U.S. Mail, postage pre-paid, this 29th day of January 2013.

Respectfully Submitted,



D. Diane Dillard
Counsel for the City of Brownsville, Texas

Attachment

CC:

Mayor Tony Martinez
City of Brownsville,
PO Box 911, City Hall
1001 East Elizabeth
City of Brownsville, Texas

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

Brownsville & Matamoros Bridge Company
Mack H. Shumate., Jr.
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606-1718

Cameron County Administrator
Pete Sepulveda, Jr.
110 E. Monroe St.
Dancy Building – Second Floor
Brownsville, Texas 78520

