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THOMAS F. MCFARLAND

June 22, 2007

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 35002, *Savage, Bingham & Garfield Railroad Company --
Acquisition and Operation Exemption -- Union Pacific Railroad Company*

Finance Docket No. 35008, *Utah Transit Authority -- Acquisition Exemption --
Union Pacific Railroad Company in Salt Lake County, UT*

Dear Mr. Williams:

Hereby transmitted is an Appeal Of Decision Of Secretary, Served June 19, 2007, for
filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Utah Shipper Coalition

TMcf kl wp8 01/21/07 fileSTB6

BEFORE THE
SURFACE TRANSPORTATION BOARD

SAVAGE, BINGHAM & GARFIELD	)	
RAILROAD COMPANY - ACQUISITION	)	FINANCE DOCKET
AND OPERATION EXEMPTION -	)	NO. 35002
UNION PACIFIC RAILROAD	)	
COMPANY	)	
	)	
UTAH TRANSIT AUTHORITY --	)	
ACQUISITION EXEMPTION -- UNION	)	FINANCE DOCKET
PACIFIC RAILROAD COMPANY IN	)	NO. 35008
SALT LAKE COUNTY, UT	)	

APPEAL OF DECISION OF SECRETARY,
SERVED JUNE 19, 2007

UTAH SHIPPER COALITION
c/o Railroad Industries, Inc.
1575 Delucchi Lane, #210
Reno, NV 89502

Petitioner

THOMAS F. McFARLAND
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Attorney for Petitioner

DUE DATE: June 29, 2007
DATE FILED: June 22, 2007 (by e-mail)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SAVAGE, BINGHAM & GARFIELD	)	
RAILROAD COMPANY – ACQUISITION	)	FINANCE DOCKET
AND OPERATION EXEMPTION –	)	NO. 35002
UNION PACIFIC RAILROAD	)	
COMPANY	)	
	)	
UTAH TRANSIT AUTHORITY --	)	
ACQUISITION EXEMPTION -- UNION	)	FINANCE DOCKET
PACIFIC RAILROAD COMPANY IN	)	NO. 35008
SALT LAKE COUNTY, UT	)	

**APPEAL OF DECISION OF SECRETARY,
SERVED JUNE 19, 2007**

Pursuant to 49 C.F.R. § 1011.6(b), UTAH SHIPPER COALITION (the Coalition)^{1/} hereby appeals from a decision of the Secretary served June 19, 2007. The exceptional circumstances, clear error of judgment and/or manifest injustice required by the cited regulation are present in that the Secretary vacated the stays that existed in this matter without imposing a Board-oversight condition that was the quid pro quo for the Coalition's agreement to vacation of the stays, and to which all other parties unequivocally agreed

Attached to this Appeal is a copy of the Coalition's statement of position in this matter, dated and filed on June 1, 2007. It clearly appears in that statement that the Coalition's request that the stays be vacated was conditioned on the Board adopting a condition to the effectiveness of the exemption in Finance Docket No. 35002 that the Board would retain oversight over

^{1/} The Coalition consists of American Welding & Tank, Frito-Lay, Inc.; Mastercraft Cabinets; SMC; BMC Lumber; Interstate Brick, and US Navy-Alliant.

implementation of the transaction in that Docket for two years after the date on which rail passenger operations commence on the Bingham Industrial Lead, for the purpose of ensuring that the window for rail freight operations on that Lead is sufficient for Savage Bingham & Garfield Railroad Company (SBGR) to fulfill its common carrier obligation to shippers on that Lead or served via that Lead. That condition is referred to as "the Oversight Condition".

The Coalition's June 1 statement of position resulted from a Settlement Agreement among the Coalition, SBGR, Utah Transit Authority (UTA), and Union Pacific Railroad Company (UP). The centerpiece of the Coalition's agreement to settle was the Oversight Condition. SBGR, UTA and UP all agreed unequivocally to the Oversight Condition. The Coalition has been authorized by counsel for SBGR and UTA to state that those parties continue to agree to imposition of the Oversight Condition.^{2/}

In the absence of imposition of the Oversight Condition, the Coalition would be unalterably opposed to the transactions in Finance Docket Nos. 35002 and 35008. As set out above, the Secretary's decision has unjustly deprived the Coalition of the benefit of the stays that were in place prior to that decision. If a Board decision were to be issued promptly on appeal that imposed the Oversight Condition, the Coalition would not seek reinstatement of the stays. The Coalition seeks only that the agreement of the parties be implemented, which includes the Oversight Condition. However, if the Oversight Condition is not to be imposed promptly on appeal, the Coalition will actively oppose the transactions in both Dockets, and will take the position that the stays should be reinstated in order to restore the status quo ante.

^{2/} Counsel for UP is traveling and could not be reached for an expression of continued agreement.

WHEREFORE, the decision of the Secretary served June 19, 2007 should be vacated, and a Board decision should be issued that imposes the Oversight Condition along with vacation of the stays.

Respectfully submitted,

UTAH SHIPPER COALITION
c/o Railroad Industries, Inc.
1575 Delucchi Lane, #210
Reno, NV 89502

Petitioner

Thomas F. McFarland

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Attorney for Petitioner

DUE DATE: June 29, 2007
DATE FILED: June 22, 2007 (by e-mail)

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THOMAS F. MCFARLAND

June 1, 2007

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 35002, *Savage, Bingham & Garfield Railroad Company -- Acquisition and Operation Exemption -- Union Pacific Railroad Company*

Finance Docket No. 35008, *Utah Transit Authority -- Acquisition Exemption -- Union Pacific Railroad Company in Salt Lake County, UT*

Dear Mr. Williams:

Utah Shipper Coalition (USC) has entered into a Settlement Agreement, dated May 30, 2007, with Utah Transit Authority (UTA), Union Pacific Railroad Company (UP), and the Savage, Bingham & Garfield Railroad Company (SBGR) regarding the subject matter of the above proceedings.

Based on the agreements between and among the parties to that Settlement Agreement, and subject to the condition identified below, USC hereby:

- (1) respectfully requests leave to withdraw its Petition for a Stay of the transactions in Finance Docket Nos. 35002 and 35008;
- (2) advises the Board that it supports the exemption sought in Finance Docket No. 35002, and does not oppose the Motion to Dismiss in Finance Docket No. 35008.

The request in No. 1 above and the positions expressed in No. 2 above are conditioned upon imposition by the Board of a condition to effectiveness of the exemption in Finance Docket No. 35002 whereby the Board would retain oversight over implementation of the transaction in that Docket for two years after the date on which passenger operations commence on the

THOMAS F. MCFARLAND

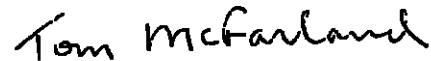
Vernon A. Williams

June 1, 2007

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Bingham Industrial Lead, for the purpose of ensuring that the window for freight operations on that Lead is sufficient for SBGR to fulfill its common carrier obligation to shippers on that Lead or served via that Lead

Respectfully submitted,



Thomas F. McFarland

Attorney for Utah Shipper Coalition

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cc Mr. Gary Hunter, *by e-mail to gvh@railroadindustries.com*
Charles Spitulnik, Esq., *by e-mail to cspitulnik@kaplankirsch.com*
Robert vom Eigen, Esq., *by e-mail to RvomEigen@foley.com*
Mack H. Shumate, Esq., *by e-mail to mackshumate@up.com*

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2007, I served the foregoing document, Appeal Of Decision Of Secretary, Served June 19, 2007, by e-mail to Charles A. Spitulnik, Esq., Kaplan Kirsch & Rockwell, LLP, 1001 Connecticut Ave., N.W., Suite 905, Washington, DC 20036, *cspitulnik@kaplankirsch.com*, Robert P. vom Eigen, Esq., Foley & Lardner, LLP, 3000 K Street, N.W., Suite 500, Washington, DC 20008, *rvomeigen@foley.com*, and Mack H Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606, *mackshumate@up.com*, with confirmation by first-class, U.S. mail, postage prepaid.

Thomas F McFarland

Thomas F. McFarland