

BEFORE THE
SURFACE TRANSPORTATION BOARD



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Public Record

DOCKET NO. AB-397 (SUB-NO. 4X)
TULARE VALLEY RAILROAD COMPANY
ABANDONMENT EXEMPTION
IN TULARE COUNTY, CA

CITY OF TULARE REQUEST TO REOPEN,
PARTIALLY VACATE AND REISSUE
NOTICE OF INTERIM TRAIL USE
PURSUANT TO 49 C.F.R. 1152.29 (d)(2)

FILED

MAR 14 2002

SURFACE
TRANSPORTATION BOARD

FILING FEE WAIVED

Keith G. O'Brien
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Counsel for City of Tulare

DATED: March 14, 2002

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-397 (SUB-NO. 4X)
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Comes now the City of Tulare ("City") and as set forth below, requests that (1) the above captioned exempt abandonment proceeding be reopened; (2) the Board partially vacate and modify the relevant Notice of Interim Trail Use imposed by the Board in a (joint) decision served June 15, 1998; and (3) the Board reissue the appropriate exemption for that portion of the right-of-way (described below) for which the City will no longer serve as trail user. In support of its request, City states as follows:

(1) In STB Docket No. AB 397 (Sub-No. 4X), the Tulare Valley Railroad ("TVR") filed a notice of exemption under 49 C.F.R. 1152, Subpart F - Exempt Abandonments to abandon approximately 5 miles of railroad from milepost 15.1 at Tulare to milepost 20+ 1191.3 at Lomas, in Tulare County, CA. (Line X)¹ The notice of exemption was served and published on August 20, 1996.²

¹ See map, Exhibit No. 1.

² Previously on March 24, 1994, the Interstate Commerce Commission served a Decision in Docket No. AB 397 (Sub-No. 1X) granting TVR an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon, as relevant here, a line of railroad extending between

(2) Commencing in April 1997, the American Trails Associations ("ATA") acquired possession of Line X between milepost 15.1 and milepost 17+ 3025, subject to an STB imposed NITU.

(3) On November 10, 1997, City filed a request for substitution of interim trail operator insofar as City sought to serve as trail user in lieu of ATA pursuant to 49 C.F.R. 1152.29 (f). The former TVR right-of-way for which City sought to replace ATA extended between milepost 12+ 5055 and milepost 17+3025. In a decision served on December 19, 1997, the Board reopened Docket No. AB-397 (Sub-No. 1X) and STB Docket No. AB-397 (Sub-No. 4X), vacated the previous NITUs in favor of ATA, and authorized City to serve as the new trail user over the right-of-way.

(4) Pursuant to a pleading filed by City on April 22, 1998, the Board issued a decision that (a) partially vacated its "Decision and Notice of Interim Trail Use or Abandonment" served December 19, 1997, with regard to the line segment between a point located on the center of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 284+57.16) in Docket No. AB-397 (Sub-No. 1X), and, as relevant here, a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817.+06.5) in STB Docket No. AB-397 (Sub-No. 4X); and (b) modified the prior decision by permitting City to remain as trail user for the former TVR right-of-way between milepost 12+5055 (west side of Inyo Avenue in Tulare, CA) and a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16) in Docket No. AB-397 (Sub-No. 1X), and between a point about 1,999.6

milepost 0.3 at Corcoran and milepost 15.1 at Tulare, CA. (Line Y). The section of line connected with Line X at milepost 15.1.

feet easterly of milepost 15 (railroad station 2817+06.5), and milepost 17+ 3025 (north side of Prosperity Avenue in Tulare, CA) in STB Docket No. AB-397 (Sub-No. 4X), and permitted the portion of the former TVR right-of-way traversing Pine Street to be fully abandoned.³

(5) Because of changes in local land use plans City hereby requests, that the Board - (1) partially vacate its decision and Notice of Interim Trail Use or Abandonment issued jointly for STB Docket No. AB-397 (Sub-No. 1X) and STB Docket No. AB-397 (Sub-No. 4X), as that decision pertains to the former TVR right-of-way extending between a point 1999.6 feet easterly of milepost 15 (railroad station 2817 + 06.5), and milepost 17+ 3025 (north side of Prosperity Avenue in Tulare, CA)⁴; (2) issue a modified NITU permitting the City to remain as trail user in STB Docket No. AB-397 (Sub-No. 4X) for the former TVR right-of-way between a point 2637.6 feet easterly of milepost 15 (railroad station 2810 + 68.5), and milepost 17 + 3025 (north side of Prosperity Avenue in Tulare, CA); and (3) reissue the appropriate exemption to permit the portion of the former TVR right-of-way extending between railroad station 2817+06.5 through railroad station 2810+68.5 to be fully abandoned.

(6) In view of current efforts to accommodate community interests and to modify City plans which envision timely abandonment of the relevant 638 foot segment at the end of the former TVR right-of-way⁵; City respectfully requests that the partially

³ The relevant line segment is wholly within the City of Tulare and is governed by STB Docket No. AB-397 (Sub-No. 4X).

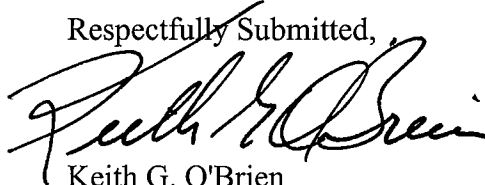
⁴ A copy of that decision is attached as Exhibit No. 2.

⁵ See Exhibit 1, line segment Z.

vacated and modified NITU for STB Docket No. AB-397 (Sub-No. 4X), as described herein, be made effective on or before June 15, 2002.

- (7) City will serve a copy of the requested decision upon ATA and TVR.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written in a cursive style.

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Counsel for City of Tulare

Dated: March 14, 2002

CERTIFICATE OF SERVICE

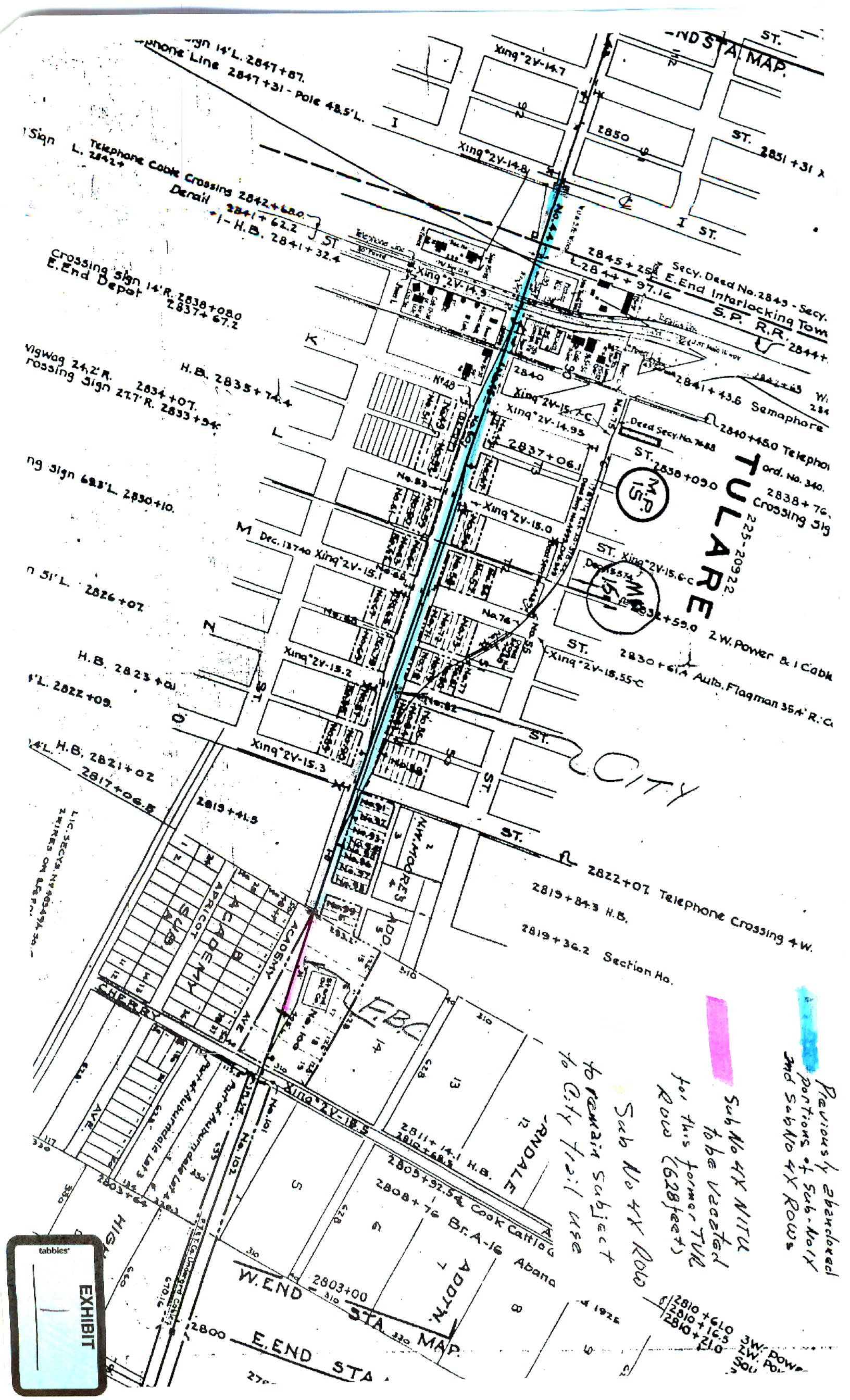
I hereby certify that I have, this 14th day of March, 2002, served a copy of the foregoing document upon the parties listed below, by United States Postal Service, first class postage prepaid.

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P.O. Box 30076
Salt Lake City, UT 84130-0076



Keith G. O'Brien



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SERVICE DATE - JUNE 15, 1998

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SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-397 (Sub-No. 1X)¹

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN KINGS AND TULARE COUNTIES, CA

STB Docket No. AB-397 (Sub-No. 4X)

TULARE VALLEY RAILROAD COMPANY--ABANDONMENT--
EXEMPTION--IN TULARE COUNTY, CA

Decided: June 10, 1998

In Docket No. AB-397 (Sub-No. 1X), by decision served March 24, 1994,² the Interstate Commerce Commission granted Tulare Valley Railroad Company (TVR) an exemption under former 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon 29.5 miles of rail line: (1) between milepost 0.3 at Corcoran and milepost 15.1 at Tulare, and (2) between milepost 23.8 at Visalia and milepost 38.5 at Cutler, in Kings and Tulare Counties, CA.³ The exemption became effective on April 23, 1994, subject to employee protective conditions. On May 3, 1994, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided a 180-day period for TVR to negotiate an agreement with American Trails Association

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience only.

² Notice of the exemption was published in the Federal Register on March 24, 1994 (59 FR 14000).

³ The March 24, 1994 decision also imposed several environmental conditions requiring: (1) TVR to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) TVR to consult with the California Environmental Protection Agency, State Water Resources Control Board Office, prior to engaging in any salvage activities; and (3) that no salvage activities shall begin until the requirements under section 7 of the Endangered Species Act, 16 U.S.C. 1536, have been completed. By decision served July 29, 1994, the section 7 (Endangered Species Act) condition, imposed in the decision served March 24, 1994, was modified to read: In order to limit the effect on any Federally listed threatened and endangered species, the Tulare Valley Railroad Company must confine its salvage activities to the railroad's right-of-way.

EXHIBIT

2

(ATA). On April 20, 1995, ATA notified the Board that an interim trail use/rail banking agreement had been timely reached.

On April 22, 1997, ATA filed a request for partial vacation of the NITU served May 3, 1994. By decision served May 14, 1997, the NITU was modified and vacated with respect to the line segment between milepost 0.3 at Corcoran and milepost 12+5055 at the west side of Inyo Avenue in Tulare, in Kings and Tulare Counties, CA, a distance of 12 miles.

In STB Docket No. AB-397 (Sub-No. 4X), TVR filed a notice of exemption under 49 CFR 1152, Subpart F--Exempt Abandonments to abandon approximately 5 miles of railroad from milepost 15.1 at Tulare, to milepost 20+1191.3 at Loma, in Tulare County, CA. A notice of the exemption was served and published in the Federal Register on August 20, 1996 (61 FR 43117). On September 17, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for the City of Tulare (City), to negotiate an interim trail use/rail banking agreement with TVR for the right-of-way involved in this proceeding. The negotiation period expired on March 18, 1997.⁴ On March 26, 1997, a NITU was served, which authorized a 180-day period for ATA, as a new negotiation party, to negotiate an interim trail use/rail banking agreement with TVR for the 5-mile line of railroad.

By decision served December 19, 1997, the proceedings were reopened and the decisions and notices of interim trail use served May 3, 1994, and March 26, 1997, were vacated as to the segment between milepost 12+5055 and milepost 17+3025, and the City was authorized to replace ATA as the new trail user over the involved right-of-way, effective on December 19, 1997.⁵

On January 28, 1998, ATA filed a notice of intent to terminate trail use for the right-of-way between milepost 38.5 at Cutler and milepost 27+4200 at Visalia, a distance of approximately 11 miles in Tulare County, CA, in Docket No. AB-397 (Sub-No. 1X), and between milepost 20+1191.3 near Loma and milepost 17+3025 in Tulare, a distance of approximately 3 miles in Tulare County, CA, in STB AB-397 (Sub-No. 4X), pursuant to 49 CFR 1152.29(d)(2). By decision served February 6, 1998, the proceedings were reopened and the decisions and notices of interim trail use served May 3, 1994, and March 26, 1997, were vacated with respect to the line segments between milepost 38.5 at Cutler and milepost 27+4200 at Visalia; and between milepost 20+1191.3 near Loma and milepost 17+3025 in Tulare, effective February 13, 1998, as requested.

⁴ The September 17, 1996 decision imposed a 180-day public use condition, that expired on March 18, 1997. The decision also imposed an endangered species condition under section 7 of the Endangered Species Act, 16 U.S.C. 1536. That condition was removed by decision served October 18, 1996.

⁵ The NITU issued on March 26, 1997, in STB Docket No. AB-397 (Sub-No. 4X) evidently led to a trail use agreement between TVR and ATA that covered at least the segment between milepost 15.1 and milepost 17+3025 because the City's filing indicated that this segment has been in ATA's possession since April 1997.

In a pleading filed April 22, 1998, the City requests that the Board: (1) partially vacate the decision and notice of interim trail use or abandonment served December 19, 1997, with respect to the line segment between a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16) in Docket No. AB-397 (Sub-No. 1X), and a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817+06.5) in STB Docket No. AB-397 (Sub-No. 4X); and (2) modify the decision permitting the City to remain as trail user for the former TVR right-of-way between milepost 12+5055 (west side of Inyo Avenue in Tulare) and a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16) in Docket No. AB-397 (Sub-No. 1X), and between a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817+06.5), and milepost 17+3025 (north side of Prosperity Avenue in Tulare) in STB Docket No. AB-397 (Sub-No. 4X), and permit the portion of the former TVR right-of-way traversing Pine Street to be fully abandoned. The City states that trail use for the portion of the Pine Street right-of-way does not conform with City purposes and is inconsistent with the City's proposed master plan for the development of the area. The City requests that partial vacation of the NITUs as to these line segments be made effective on or before June 15, 1998.

The City has complied with the requirements of 49 CFR 1152.29(d)(2) regarding a request to vacate the NITU and for modification. Under the circumstances, TVR may fully abandon the line between a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16) and a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817+06.5).

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The decision and notice of interim trail use served December 19, 1997, is vacated with respect to the line segment between a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16), and a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817+06.5), and the City will remain as the trail user for the line segments between milepost 12+5055 (west side of Inyo Avenue in Tulare), and a point located on the center line of "I" Street approximately 1,051.06 feet westerly of milepost 15 (railroad station 2847+57.16) and between a point about 1,999.6 feet easterly of milepost 15 (railroad station 2817+06.5 and milepost 17+3025 (north side of Prosperity Avenue in Tulare, CA) and TVR may fully abandon the segment for which the NITU has been vacated.

Docket No. AB-397 (Sub-No. 1X), et al.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary