



Law Department

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IDAHO PUBLIC
UTILITIES COMMISSION

February 6, 2013

State Clearinghouse (or alternate):
Idaho Transportation Department
3311 W State Street
P.O. Box 7129
Boise, ID 83707-1129

State Environmental Protection Agency:
Idaho Department of Environmental Quality
1410 N. Hilton
Boise ID 83706

Head of each County:
Canyon County Board of Commissioners
1115 Albany Street
Caldwell, ID 83605

Environmental Protection Agency
(Regional Office):
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

State Historic Preservation Office
State Historical Society Library and Archives
2205 Old Penitentiary Road
Boise, ID 83712

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

U.S. Fish and Wildlife:
U.S. Fish & Wildlife Service
1987 S. Vinnell Way, Suite 368
Boise, ID 83709

U.S. Army Corps of Engineers:
U. S. Army Corps of Engineers,
Walla Walla District
201 North 3rd Avenue
Walla Walla, WA 99632-1876

National Park Service:
National Park Service
221 North State Street
Hagerman, ID 83332

U.S. Natural Resources Conservation Service:
Natural Resource Conservation Service
9173 W. Barnes Drive, Suite C
Boise, ID 83709-1574

National Geodetic Survey:
National Geodetic Survey
Geodetic Services Division
Information Services
NOMINGS12
1315 E-W Highway
Silver Spring, MD 20910-3282

Re: Proposed Abandonment of the Stoddard Industrial Lead in Nampa, from Milepost 0.90 to Milepost 1.75, a total distance of 0.85 miles in Canyon County, Idaho; STB Docket No. AB-33 (Sub-No. 294X)

To Whom It May Concern:

On August 30, 2010, Union Pacific sent your agency a letter seeking comments concerning the above proposed abandonment. On November 24, 2010, Union Pacific submitted to the Surface Transportation Board a Combined Environmental and Historic Report (CEHR) concerning the proposed abandonment. However, Union Pacific did not submit the proposed abandonment in late 2010 for several business related reasons which are no longer applicable. Union Pacific now wishes to proceed with the proposed abandonment. In order to progress the proposed abandonment, an updated CEHR must be filed. Accordingly, Union Pacific requests any update or revision your agency desires to submit with regard to the proposed abandonment. For your convenience, I have attached the response, if any, your agency submitted with regard to the CEHR filed November 24, 2010.



Union Pacific Railroad Company plans to request authority from the Surface Transportation Board (STB) to abandon and discontinue service on the Stoddard Industrial Lead in Nampa, from Milepost 0.90 to Milepost 1.75, a total distance of 0.85 miles in Canyon County, Idaho. A map of the proposed track abandonment shown in black is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 40 C.F. R. Part 1105.7, this is to request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental impacts.

However, if you identify any adverse environmental impacts, describe any actions that are proposed in order to mitigate the environmental impacts. Please provide us with a written response that can be included in an Environmental Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U.S. FISH AND WILDLIFE SERVICE (And State Game And Parks Commission. If Addressed). State (1) whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects, and, (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or Local water quality standards. Describe any inconsistencies.

U. S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S. C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

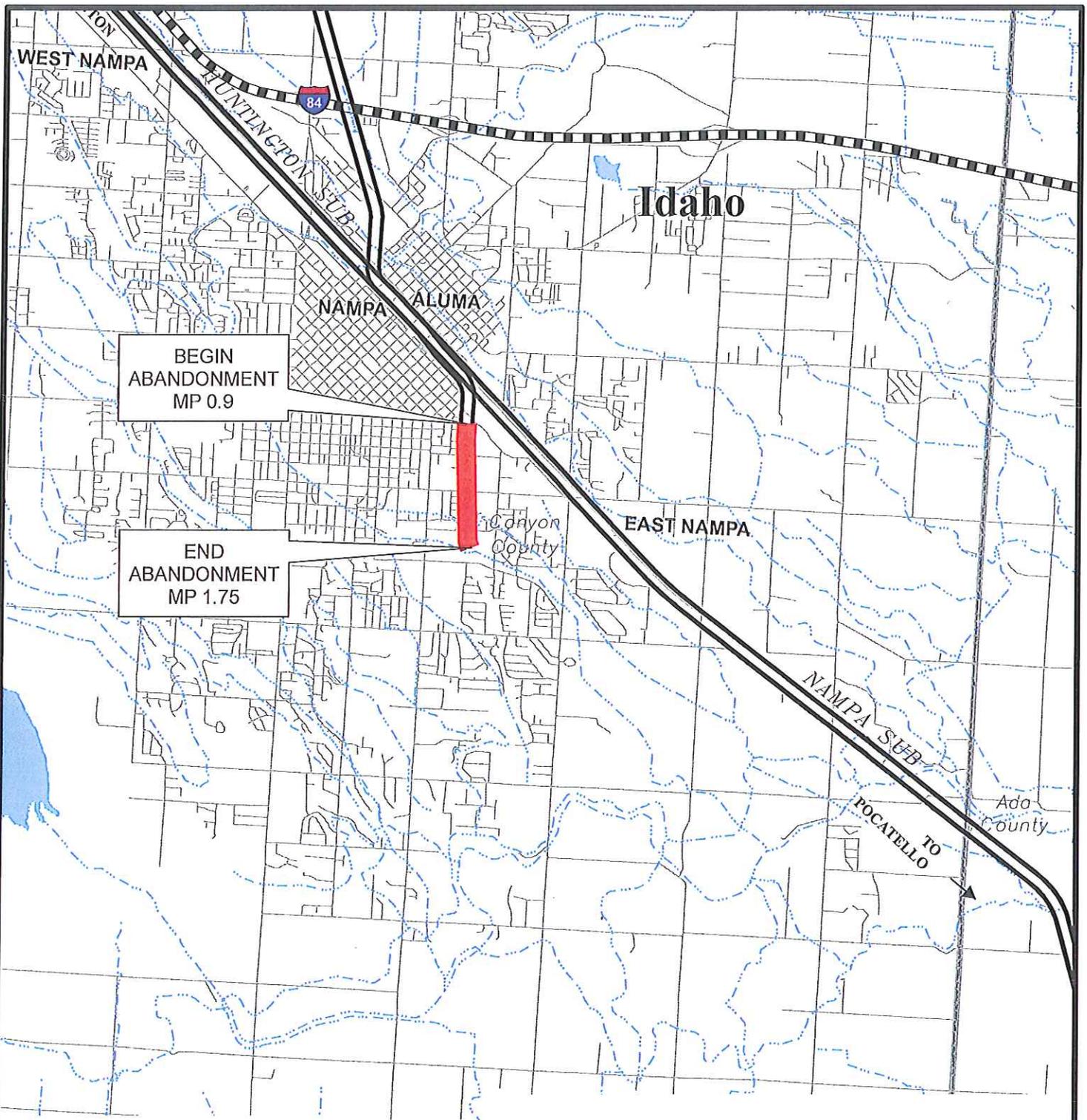
U.S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL Protection
(1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

Thank you for your assistance. Please send your reply to the undersigned.

Sincerely,

Jessica L. Johnson
Paralegal-Law Department
Union Pacific Railroad
Law Department
1400 Douglas St., Stop 1580
402-544-3868
jjjohnson@up.com

Enclosures: Map and Past Response (if applicable)



Legend

- abandonment.csv Events
- OTHER UPRR LINES
- PRINCIPAL HIGHWAYS
- OTHER ROADS

STODDARD INDUSTRIAL LEAD

MP 0.9 TO MP 1.75
 TOTAL OF 0.85 MILES IN CANYON COUNTY
 IN IDAHO

**UNION PACIFIC RAILROAD CO.
 STODDARD INDUSTRIAL LEAD
 IDAHO**

NOTE : THERE ARE NO 50+ YEAR OLD STRUCTURES



required by federal law and STB regulations to submit an Environmental Report analyzing the potential environmental impact caused by the proposed abandonment.

NOTICE OF HEARING

YOU ARE FURTHER NOTIFIED that the authority to grant or deny abandonment rests with the STB and is governed by federal law. However, "the public utilities commission shall schedule a public hearing on the proposed abandonment." *Idaho Code* § 62-424(1). The purpose of the hearing is for the Commission to determine whether the abandonment would: (1) adversely affect the area being served; (2) impair the access of Idaho shippers to vital goods and markets; and (3) whether the rail line has a potential for profitability. *Id.* If the Commission finds that the abandonment would adversely affect the area being served and the line has the potential for profitability, then it shall submit a report of its findings to the STB on behalf of the people of the State of Idaho. *Id.* The Commission "shall continue to intervene in federal surface transportation board abandonment proceedings when necessary to protect the state's interest." *Idaho Code* § 62-424(2).

YOU ARE FURTHER NOTIFIED that the Commission has scheduled a public hearing in this matter to commence at **7:00 P.M. ON OCTOBER 13, 2010, IN THE NAMPA CITY HALL BUILDING, 411 THIRD STREET SOUTH, NAMPA, IDAHO.** The purpose of the hearing is to take public testimony as to whether UP's proposed abandonment of an approximately 0.85 mile section of its Stoddard Industrial Lead rail line in Canyon County, Idaho would be adverse to Idaho's public interest. The railroad, any shipper, local government leaders, and any other interested persons are encouraged to testify.

YOU ARE FURTHER NOTIFIED that all hearings will be conducted in accordance with the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

YOU ARE FURTHER NOTIFIED that UP's letter, with attachment, has been filed with the Commission and is available for public inspection during regular business hours at the Commission offices. The letter is also available on the Commission's web site at www.puc.idaho.gov by clicking on "File Room" and then "Rail Cases."

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate

in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
E-Mail: secretary@puc.idaho.gov

YOU ARE FURTHER NOTIFIED that the Commission has jurisdiction over this matter pursuant to *Idaho Code* § 62-424.

ORDER

IT IS HEREBY ORDERED that the Commission shall convene a public hearing in this matter as set out above.

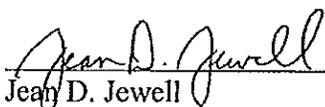
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th day of September 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER

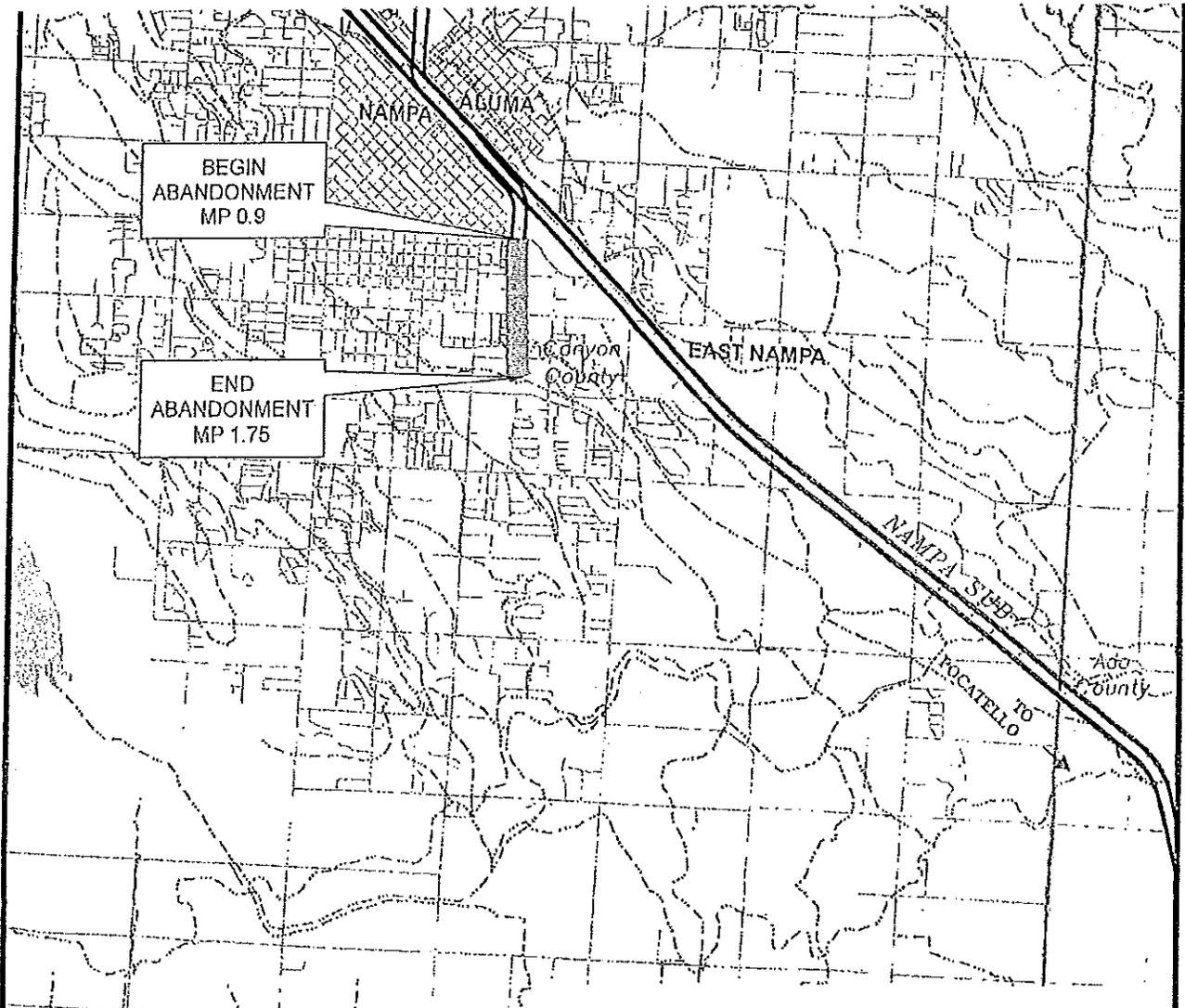

MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:UPR-R-10-01_np

NOTICE OF INTENT TO ABANDON
NOTICE OF HEARING
ORDER NO. 32073



Legend

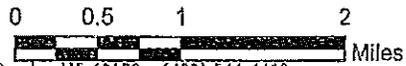
-  abandonment.csv Events
-  OTHER UPRR LINES
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS

STODDARD INDUSTRIAL LEAD

MP 0.3 TO MP 1.75
TOTAL OF 0.85 MILES IN CANYON COUNTY
IN IDAHO

**UNION PACIFIC RAILROAD CO.
STODDARD INDUSTRIAL LEAD
IDAHO**

NOTE : THERE ARE NO 50+ YEAR OLD STRUCTURES



Q:\abandonments\lab33_284x_Stoddard\ndf.rxd
UNION PACIFIC RAILROAD 1400 Douglas Street Stop 1580 Omaha, NE 68179 (402) 544-4468

ATTACHMENT
ORDER NO. 32073
CASE NO. UPR-R-10-01

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PROPOSED)
ABANDONMENT OF A SECTION OF) CASE NO. UPR-R-10-01
UNION PACIFIC RAILROAD)
COMPANY'S RAIL LINE FROM)
MILEPOST 0.9 TO MILEPOST 1.75, A)
TOTAL DISTANCE OF 0.85 MILES, IN) ORDER NO. 32135
CANYON COUNTY, IDAHO)**

INTRODUCTION

On September 14, 2010, Union Pacific Railroad Company ("UP" or "Company") issued a letter declaring that UP intends to request authority from the Surface Transportation Board ("STB") to abandon and discontinue service, from Milepost 0.9 to Milepost 1.75, on the Stoddard Industrial Lead ("the Line") in Nampa, Canyon County, Idaho. UP's action before the STB is referenced as Docket No. AB-33 (Sub-No. 294X). In addition, the Company attached a map outlining the portion of the rail line it intends to abandon.

On October 13, 2010, the Commission held a public hearing in Nampa, Idaho, regarding UP's proposed abandonment. At the hearing, the Commission heard from several parties, including potential shippers with businesses located on the section of the rail line UP is seeking to abandon.

On December 2, 2010, UP submitted its Combined Environmental and Historical Report with the STB. In the filing, UP stated that it planned to file a formal Notice of Exemption to abandon the Line with the STB on or after December 14, 2010.

THE PROPOSED ABANDONMENT

UP stated that it is requesting "assistance in identifying any potential effects of this action. . . ." *UP Letter* at 1. Pursuant to federal law and STB regulations, UP is required to submit an Environmental Report to the STB analyzing the potential environmental impact caused by the proposed abandonment. *Id.* UP states that it does not "anticipate any adverse environmental impacts." *Id.*

A preliminary investigation conducted by Commission Staff revealed several potential shippers along the .85 mile section of the rail line subject to abandonment. These shippers are currently trucking their goods to another section of the rail line for service because UP has not adequately maintained the .85 mile section of the Stoddard Industrial Lead. These shippers have continuously expressed interest in receiving rail service at their business situs.

PUBLIC HEARING AND COMMENTS

At the public hearing, the Commission heard and carefully considered the testimony of numerous individuals regarding UP's proposed abandonment. The Commission listened to the testimony of Ellis Hire, Staff Railroad Section Investigator, describing the condition of the Line, and the adjacent area. *See Tr.* at 7-16. Mr. Hire described the Line as being in disrepair, stating that the pavement at the Second Street crossing "was all broke up around the tracks." *Tr.* at 13. On or about July 30, 2010, UP notified Mr. Hire that "they were going to fix it." *Id.* When Mr. Hire visited the crossing in order to verify the repair, he noted that the Company had "actually paved over the crossing right over the top of the rails . . ." and "started taking some rail out. . ." *Id.*

The Commission also heard from officials from the city of Nampa, Idaho; *see Id.* at 17-24, and several shippers located on the Line, *see Id.* at 25-44.

Ms. Larita Schandorff, representative for the Nampa Bicycle and Pedestrian Citizens Advisory Group, testified that the group views the portion of land subject to abandonment as a "critical piece in linking the south side of our city to the north side providing families safe access to downtown and . . . provide a vital link for students to an elementary school . . . adjacent to this corridor." *Id.* at 4. The City of Nampa and public comments posted to the Commission's website supported this view.

Ms. Claire Bowman, Senior Transportation Planner for the City of Nampa, Idaho, noted that "this line has already had an abandonment south of milepost 1.75." *Id.* at 17. "Two-and-a-quarter miles . . . were abandoned in 1993" and "[, i]n 1994, that ground was turned over to the City of Nampa through a rails to trails project. . ." *Id.*

Mr. Rodney Ashby, City Planner for the City of Nampa, Idaho, confirmed that the comprehensive plan for future land use included the utilization of the land subject to abandonment. *Id.* at 21. Mr. Ashby stated that the city is "currently under the development of a bike and pathway plan . . ." and that "this piece [from Iowa Street to near Second Street] is critical to that development." *Id.* at 22.

Mr. Phillip Weitz, owner of TVM Recycling ("TVM"), and Brett Lolley, representative of Seminis Vegetable Seeds ("Seminis"), testified that their respective businesses are located on the Line. *Id.* at 26, 36. Mr. Weitz commented that shipping has not occurred on the Line "for probably . . . six years. . ." *Id.* at 26. Mr. Lolley offered that Seminis has most likely not received rail service on the Line since 2005. *Id.* at 36. Both TVM and Seminis have been required, at their own

expense, to transload their products to Caldwell, Idaho, and Kuna, Idaho. *Id.* at 26, 40. Although it fails to provide service, UP does not reimburse TVM or Seminis for their costs of transloading. *Id.* at 26, 44.

The Commission received public comments from several residents of Nampa, Idaho, advocating the abandonment of the Line so that it could be utilized as a bike or pedestrian pathway.

Mr. Pete Wagner, Regional Administrator of the Idaho Department of Environmental Quality, offered preliminary comments outlining the relevant environmental criteria for assessing the proposed abandonment.

DISCUSSION AND FINDINGS

The exemption process allows railroads to abandon rail lines if the abandonment is of limited scope and does not adversely affect national rail policy. 49 U.S.C. §§ 10502 and 10101. Under STB procedures, once the exemption is filed, the STB must then publish a notice in the Federal Register within 20 days. Unless the STB stays the proceeding or rules otherwise, the Railroad may then abandon the rail line 30 days after the notice is published in the Federal Register.

Although the authority to grant or deny abandonment rests with the STB and is governed by federal law, the Commission has an obligation under state law to hold a public hearing regarding the abandonment, and to represent the State in STB abandonment proceedings if it is deemed necessary. *Idaho Code* § 62-424 states that the "commission shall schedule a public hearing on the proposed abandonment." The purpose of the hearing is for the Commission to determine whether the abandonment would: (1) adversely affect the area then being served; (2) impair an Idaho community's access to vital goods and markets; and (3) whether the rail line has a potential for profitability. *Idaho Code* § 62-424(1). If the Commission finds that the abandonment would be adverse to the public interest, then it may represent the State in the STB abandonment proceeding. *Idaho Code* § 62-424(2).

The Commission has carefully reviewed all of the filings in this case, including the testimony offered at the public hearing. Although the Commission finds that the shippers on this branch have been poorly served, we cannot find that the proposed abandonment would be adverse to the public interest, nor will it impair the community's access to vital goods and markets.

The Commission acknowledges the shippers' collective opposition to the proposed abandonment. Undoubtedly, their business operations would be significantly enhanced if UP had not stopped providing rail service to them at their business locations. However, testimony

presented at the public hearing suggested that the cost of repairing the Line now and making it suitable for rail service would not be a viable option for the shippers. *Tr.* at 28.

Additionally, it must be emphasized that primary regulatory authority governing the continuation of rail service on the Line resides with a federal agency, the STB, and not with the Commission. UP's failure to maintain the Line and ensure rail service to the shippers demonstrates its lack of commitment to its smaller customers. UP could have acted in a more collaborative manner with the shippers and possibly averted the need to abandon the Line.

Nevertheless, the Commission's review is not limited to simply the potential economic impact the proposed abandonment might have upon shippers on the Line. The Commission must also consider other interests within the community-at-large. Officials representing the City of Nampa stated that the city's long-range plan includes the utilization of the Line as a critical pathway linking residential neighborhoods to its downtown area. City planners testified that the area subject to abandonment would become a "primary route" for bicyclists and pedestrians traveling from those neighborhoods to downtown Nampa. *Id.* at 24.

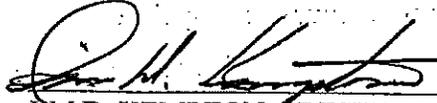
Therefore, for the foregoing reasons the Commission finds that it is unnecessary to intervene as a party representing the State of Idaho in STB Docket No. AB-33 (Sub-No. 294X).

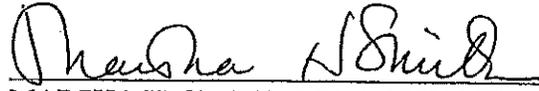
O R D E R

IT IS HEREBY ORDERED that this case be closed. The Commission will not intervene as a party representing the State of Idaho or file comments with the Surface Transportation Board regarding the proposed abandonment, more fully described above.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* §§ 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th
day of December 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:UPR-R-10-01_np2