

SERVICE DATE – SEPTEMBER 15, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36809

NORTHEAST LOUISIANA MULTIMODAL DISTRICT—
PETITION FOR DECLARATORY ORDER

Digest:¹ The Board denies a petition for declaratory order and explains that a court properly found that a 2.7-mile track segment in Louisiana is subject to the Board's exclusive jurisdiction.

Decided: September 12, 2025

Following an unsuccessful attempt to remand an expropriation proceeding from federal to state court, the Northeast Louisiana Multimodal District (NELMD) filed a petition with the Board seeking a declaratory order that a 2.7-mile track segment currently owned by Delta Southern Railroad, Inc. (DSRR), is no longer subject to the Board's jurisdiction. As explained below, the federal court that denied NELMD's remand motion and dismissed the court proceeding properly found that the segment at issue is subject to the Board's exclusive jurisdiction. NELMD's petition will be denied.

BACKGROUND

According to the petition, NELMD is a political subdivision of the State of Louisiana created to promote the development of rail service and stimulate commerce between and among the parishes of East Carroll, Madison, Tensas, and Concordia, La. (Pet. 6.) On November 22, 2023, NELMD's predecessor, the Northeast Louisiana Railroad Development District (NLRDD), filed a petition for expropriation under state law with the Sixth Judicial District Court in Madison Parish, La., seeking to acquire certain right-of-way to construct an active rail line connecting ports along the Mississippi River from East Carroll Parish to Concordia Parish, including 2.7 miles of right-of-way and tracks between milepost 498.44 near Tallulah, La., and milepost 501.15 owned by DSRR (the Track Segment). (*Id.* at 6-8.) On November 28, 2023, the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Sixth Judicial District Court issued an order of expropriation and ordered DSRR to vacate the property. (*Id.* at 8.)²

DSRR removed the case to the United States District Court for the Western District of Louisiana, Monroe Division (District Court), contending that NELMD's expropriation action is completely preempted by federal law. (*Id.* at 8.) NELMD sought remand. The matter was assigned to a magistrate, who issued a report and recommendation finding that, for the limited purpose of determining jurisdiction, the Track Segment is "excepted track" under 49 U.S.C. § 10906, notwithstanding its prior abandonment as mainline track, and that federal law preempted the state expropriation action. (Pet., Ex. 5 (Rep. & Recommendation (R. & R.)) at 6-8; *see also id.*, Ex. 5 at 4 (stating that federal law completely preempts state law concerning matters enumerated in 49 U.S.C. § 10501(b)(2)).) Accordingly, the magistrate recommended that the District Court deny NELMD's motion to remand and dismiss the case because the Board has exclusive jurisdiction over the Track Segment. (*Id.*, Ex. 5 at 7-10.) On June 10, 2024, the District Court, after also considering the objection filed by NELMD and conducting a de novo review of the record, adopted the magistrate's report and recommendation and entered a judgment of dismissal without prejudice, which NELMD did not appeal. (*See* Pet., Ex. 6 (Dist. Ct. Decision); DSRR Reply 3.)

On August 22, 2024, NELMD filed this petition for declaratory order. The petition seeks a declaration that the Track Segment (which was part of a line formerly known as the Vidalia Branch Line) "was authorized for abandonment, was in fact abandoned . . . , and, therefore, is no longer subject to the STB's jurisdiction." (Pet. 1.) NELMD's petition recounts the history of the abandonment of the Vidalia Branch Line³ and notes that Delta Southern Railroad Company (DSRC, a predecessor of DSRR) post-abandonment purchased the portion of the abandoned line south of milepost 498.4. (*Id.* at 1-4.) NELMD then argues that neither DSRC nor DSRR ever sought authorization from the agency "to resurrect the 2.7-mile [Track Segment] as part of the national rail network." (*Id.* at 7.) NELMD also states that the Track Segment "is not physically

² Copies of the petition for expropriation, the expropriation order, and related filings in the state court docket are attached as the first two exhibits to NELMD's petition for declaratory order.

³ The former owner of the Vidalia Branch Line, Missouri Pacific Railroad Company (MOPAC), filed to abandon that line (from milepost 498.4 to milepost 651.6), along with the Lake Providence Branch Line (from milepost 408.9 to milepost 498.4), in Missouri Pacific Railroad—Abandonment—in Desha & Chicot Counties, Ark., & East Carroll, Madison, Tensas & Concordia Parishes, La., ICC Docket No. AB 3 (Sub-No. 72), in 1987. In a July 11, 1988 decision, the ICC authorized abandonment of both rail lines, provided no offers of financial assistance (OFAs) were sought. *See Mo. Pac. R.R.—Aban.—in Desha & Chicot Cntys., Ark., & East Carroll, Madison, Tensas & Concordia Parishes, La.*, Docket No. AB 3 (Sub-No. 72) (ICC served July 11, 1988). After failed attempts to purchase the Vidalia Branch Line through the OFA process, the ICC granted MOPAC a certificate to abandon that line (though not the Lake Providence Branch Line). Mo. Pac. R.R.—Aban.—in Desha & Chicot Cntys., Ark., & East Carroll, Madison, Tensas & Concordia Parishes, La., Docket No. AB 3 (Sub-No. 72) (ICC served Aug. 26, 1988).

connected with DSRR’s [mainline] track that extends from MP 498.44 to MP 471.0.” (*Id.* at 14-15.) The petition concludes that, because abandonment of the former Vidalia Branch Line was authorized and consummated, the Board should declare that the Track Segment is not subject to the Board’s jurisdiction and NELMD’s efforts to expropriate it are not preempted. (*Id.* at 16.)

On September 5, 2024, DSRR filed a reply to the petition. DSRR argues that the District Court correctly found that, under federal law, the expropriation action was preempted by § 10501(b) because the Track Segment is “excepted track” under § 10906. (DSRR Reply 2-3, 8-9.) According to DSRR, the District Court’s decision in the expropriation case is “final and non-appealable,” and “has res judicata and collateral estoppel effect that precludes this [p]etition.” (*Id.* at 6; *see also id.* at 7-11.) DSRR also asserts that, on the merits, “this is a simple case that the Court got right.” (*Id.* at 6-7; *see also id.* at 11-14.) DSRR contends that the petition for declaratory order should be denied. (*Id.* at 14.)

NELMD filed a surreply on September 9, 2024, reiterating its request for a declaration that the Track Segment at issue “was authorized for abandonment, and was in fact abandoned and, therefore, is no longer subject to the STB’s jurisdiction.” (NELMD Surreply 1-2; *see also id.* at 6-10 (reprising the argument that the Track Segment was abandoned and that “DSRR was obligated to take some sort of action before the Board to bring the Track Segment back into the Board’s regulatory jurisdiction after acquiring it”).) NELMD disputes DSRR’s assertion that res judicata and collateral estoppel principles preclude the declaratory order petition. (*Id.* at 2-4.) NELMD states that leave to file the surreply should be granted to enable NELMD to respond to arguments that could not have been anticipated in its petition and to provide the Board with a more complete record. (*Id.* at 5-6.) DSRR filed a rebuttal on September 12, 2024, objecting that a reply to a reply is impermissible. (DSRR Rebuttal 1.) The rebuttal also asserts that NELMD has never attempted to plead different facts about the status of the Track Segment, (*id.* at 1-2), and addresses NELMD’s arguments about issue preclusion, (*id.* at 2-3).⁴

⁴ Replies to replies are prohibited under the Board’s rules. *See* 49 C.F.R. § 1104.13(c). Although replies to replies often have been accepted in the past, the Board recently explained that its rule prohibiting them will be more strictly enforced going forward to promote the orderly and efficient administration of cases. *Sunflower State Indus. Ry.—Pet. for Declaratory Ord.*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). Accordingly, NELMD’s request for leave to file its reply to DSRR’s reply is denied, and neither it nor DSRR’s September 12, 2024 rebuttal will be accepted into the record. Nonetheless, given the Board’s past acceptance of many replies to replies despite the 49 C.F.R. § 1104.13(c) prohibition, the Board reviewed NELMD’s reply and concludes that, even if accepted into the record, it would not change the results reached in today’s decision. *Compare* NELMD Surreply 10 (arguing that “because MoPac sought and obtained the permission of the ICC to abandon the Track Segment in 1988, . . . DSRR was obliged to take some sort of action before the Board to bring the Track Segment back into the Board’s regulatory jurisdiction after acquiring it, but it has not done so”) *with* pages 4-5, *infra* (explaining how abandoned track can be brought back under the Board’s jurisdiction as exempt track under 49 U.S.C. § 10906 without entry licensing).

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); InterCity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Ord. Procs., 5 I.C.C. 2d 675 (1989). As explained below, the District Court properly found that the Track Segment is subject to the Board’s exclusive jurisdiction, and NELMD’s petition for a declaratory order to the contrary therefore will be denied.

As a threshold matter, issues involving the federal preemption provision in 49 U.S.C. § 10501(b) can be decided by either the Board or the courts in the first instance, as the Board and courts have concurrent jurisdiction to determine preemption. See, e.g., 14500 Ltd.—Pet. for Declaratory Ord., FD 35788, slip op. at 2 (STB served June 5, 2014). The petition for a declaratory order here generally reprises arguments about the status of the Track Segment which the District Court considered and rejected in concluding that NELMD’s state law expropriation case was preempted under § 10501(b)(2). (Compare, e.g., Pet. 5, 16 with Pet., Ex. 5 (R. & R.) at 4-7; Pet., Ex. 6 (Dist. Ct. Decision) (finding that the magistrate’s report and recommendation is correct and entering judgment as recommended therein.)) The District Court found that NELMD’s arguments about the alleged non-jurisdictional status of the Track Segment lacked merit and that the Track Segment was “excepted track” under § 10906 and therefore subject to the Board’s exclusive jurisdiction under § 10501(b)(2). NELMD suggests that a declaratory order is warranted here because the District Court was “unsure whether the Board retains jurisdiction over the Line at issue,” (Pet. 16), emphasizing a footnote in the magistrate’s report stating that, should the Board “determine it does not have jurisdiction over this controversy, the matter may return to this Court to be disposed of in an appropriate manner,” (Pet., Ex. 5 (R. & R.) at 10 n.7). NELMD, however, appears to give that statement greater weight than warranted, given the magistrate’s findings regarding the nature of the Track Segment and the preemptive effect of Board jurisdiction on NELMD’s state law claims. Moreover, the District Court adopted these findings when it entered judgment dismissing NELMD’s expropriation case over NELMD’s objections, including NELMD’s alternate request to stay the proceeding and refer to the Board the question of whether it has jurisdiction over the Track Segment. (See DSRR Reply, Ex. B (NELMD Objections to R. & R.) at 1; Pet., Ex. 6 (Dist. Ct. Decision).)⁵

In any event, the Board agrees with the District Court that the Track Segment is excepted track under § 10906 and accordingly subject to the Board’s jurisdiction. NELMD’s position that the Board lacks jurisdiction over the Track Segment is mistaken and reflects a misunderstanding of the statutory provisions under Part A of Subtitle IV of Title 49 that govern this dispute. NELMD asserts that when Congress enacted the ICC Termination Act of 1995 (ICCTA) it did not preempt state laws involving “expropriation of real property and tracks that have been

⁵ Given the Board’s primary responsibility for administering the interstate rail statutory provisions at Part A of Subtitle IV of Title 49, courts routinely refer such issues to the Board given the agency’s experience and expertise with this specialized industry and its regulatory framework.

lawfully removed from the national rail network by decisions of the ICC or the STB.” (Pet. 5.) NELMD also suggests that, because the Vidalia Branch Line had been abandoned, DSRR was required to seek authority from the Board to bring the Track Segment back under the Board’s jurisdiction. (See generally id. at 7, 8-9, 14.)

NELMD’s arguments are incorrect.⁶ The Board has recognized, following ICCTA’s passage, that “[w]hen sections 10501(b) and 10906 [of title 49] are read together, it is clear that Congress intended to occupy the field and preempt state jurisdiction over excepted track such as yard track, even though Congress allowed rail carriers to construct, operate, and remove such facilities without Board approval.” Fox—Pet. for Declaratory Ord., FD 35161, slip op. at 4 (STB served May 18, 2009) (citations omitted),⁷ aff’d, 379 F. App’x. 767 (10th Cir. 2010). Moreover, a rail carrier with sufficient property rights in the underlying land (which appears to be undisputed here⁸) would be free to reconstruct track for use as a spur, industrial, team, switching, or side track (i.e., qualifying as § 10906 track) “regardless of whether it had previously been removed from the interstate rail system” through abandonment, and without the need for construction and operating authority from the agency. Great Walton R.R.—Pet. for Declaratory Ord., AB 1242 (Sub-No. 1), slip op. at 11-12 (STB served June 23, 2020).⁹

⁶ NELMD filed a letter on July 24, 2025, arguing that a recent Board decision in Walkersville Southern Railroad—Discontinuance of Service Exemption—Frederick County, Md., AB 1339X (STB served July 21, 2025), supports its position that the abandonment of the Vidalia Branch Line in 1989 deprived the Board of jurisdiction over the Track Segment. DSRR filed a letter response on July 30, 2025, arguing that Walkersville Southern has no relevance to this case. DSRR is correct. Neither Walkersville Southern nor Wisconsin Central Ltd. v. STB, 112 F.3d 881 (7th Cir. 1997), which is cited in Walkersville Southern, involved the circumstances present here—namely, a line segment that was abandoned but thereafter repurposed and put into active use as § 10906 excepted track subject to the Board’s exclusive jurisdiction under § 10501(b)(2).

⁷ As the Board explained in Fox, FD 35161, slip op. at 4, the jurisdiction conferred under 49 U.S.C. § 10501(b)(1)(2) includes exclusive jurisdiction over “the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.”

⁸ (See Pet. 1 (stating that track segment “is owned by [DSRR]”); id., Ex. 1 (NLRDD Pet. for Expropriation) (“Included with the right of way required for said project is certain property believed to be owned by the defendant, Delta Southern Railroad.”).)

⁹ Related statements in NELMD’s petition also misdescribe the governing statutory scheme and its applicability to the facts of this case. (See, e.g., Pet. 14 (suggesting DSRR was providing common carrier service on the Track Segment), 15-16 (contending the Board has no jurisdiction over “non-regulated” track).) Under the statute that establishes the agency’s jurisdiction, track that is excepted from regulation under § 10906 remains subject to the Board’s exclusive jurisdiction. See § 10501(b)(2) (stating that “[t]he jurisdiction of the Board over . . . the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities . . . is exclusive.”); see also Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1188 (10th Cir. 2008) (explaining that jurisdiction over the tracks

The District Court found, for the purpose of determining its own jurisdiction, that the Track Segment is excepted track under § 10906. (Pet., Ex. 5 (R. & R.) at 7; *id.*, Ex. 6 (Dist. Ct. Decision) at 1.) Its determination was based on evidence submitted by DSRR that NELMD did not dispute. In determining whether a particular track segment is excepted track, the agency and courts consider factors such as the track’s intended use, physical characteristics, relationship to the rail system, and history. Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 4 (STB served June 1, 2017); Liberty Harbor Holding LLC—Pet. for Declaratory Ord., FD 36772, slip op. at 2 (STB served Oct. 3, 2024); *see also* N.Y. City Econ. Dev. Corp.—Pet. for Declaratory Ord., FD 34429, slip op. at 5 (STB served July 15, 2004) (stating that “a case-by-case, fact-specific approach [is used] to make this determination”). Decisions have relied on indicia such as the length of the track; whether it serves more than one shipper; whether it is stub-ended; whether it was built to penetrate new markets; whether there is regularly scheduled service; traffic volume; who owns and maintains the track; whether the track was constructed with light-weight rail; the condition of the track; what the track is used for; and whether there are stations on the track. Tri-City R.R., FD 36037, slip op. at 4. Evidence regarding some indicia may be sufficient to determine the legal status of the track without need to consider all potential indicia. Liberty Harbor Holding, FD 36772, slip op. at 3. The record here indicates that DSRR uses the Track Segment to stage and store rail equipment incidental to DSRR’s line haul movements and the receipt of shipments,¹⁰ which are recognized uses of § 10906 track to support a carrier’s rail operations.¹¹ Additionally, the record reflects that the Track Segment has other important characteristics of § 10906 track: it is a short segment; it is not used to serve a specific customer’s facility or invade another railroad’s territory; and there is no scheduled, regular, or overhead service on the track.¹²

specified in § 10501(b)(2) rests solely with the Board and that § 10906 has been interpreted to preclude both state and federal regulation of these tracks); Friberg v. Kan. City S. Ry., 267 F.3d 439, 443 n.13 (5th Cir. 2001) (“[a]lthough railroad side tracks are under the exclusive jurisdiction of the STB, rail carriers do not need prior STB approval to construct and operate those tracks” (citing 49 U.S.C. § 10906)).

¹⁰ (DSRR Reply, Ex. C (DSRR Mem. in Opp. to Mot. to Remand), Thrall Decl. paras. 13-14, 18.)

¹¹ *See, e.g.,* Union Pac. R.R.—Operation Exemption—in Yolo Cnty., Cal., FD 34252 (STB served Dec. 5, 2002), slip op. at 4 (“[I]f the line is used for loading, unloading, storage, switching, or other purposes incidental to transportation service, it is excepted trackage under section 10906.”); Swanson Rail Transfer, LP—Declaratory Ord.—Swanson Rail Yard Terminal, FD 35424, slip op. at 4 (STB served June 14, 2011) (explaining that excepted spur track is typically used for loading, unloading, storage, or switching operations that are incidental to the movement of trains).

¹² (DSRR Reply, Ex. C (DSRR Mem. in Opp. to Mot. to Remand), Thrall Decl. paras. 7-10); *see, e.g.,* N.Y. City Econ. Dev. Corp., FD 34429, slip op. at 6-7 (stating that characteristics of excepted track include that it is short or moderate in length, does not invade the territory of another railroad, and has no regularly scheduled service over it); Tri-City R.R., FD 36037, slip op. at 4 (stating that pertinent considerations in determining track’s status include (among others) length of the track; whether it serves more than one shipper; whether it was built to penetrate

In its petition, NELMD asserts that the Track Segment is “physically separated” from DSRR’s mainline and thus “does not fit within the definition of any of the ‘excepted’ tracks that are named” in § 10501(b)(2) or § 10906. (Pet. 11; see id. at 15 & 16 (stating that Track Segment is “not physically connected”).) However, NELMD cites no support for this assertion. Moreover, DSRR explains in its reply that the Track Segment is connected to its mainline by rights granted to DSRR by Kansas City Southern Railway Company [now Canadian Pacific Kansas City Limited]. (DSRR Reply 12.)¹³ NELMD also acknowledges that DSRR “uses the track south of MP 498.44 for storage of railcars.” (Pet. 15 n.12.)¹⁴ Based on the record before the Board, the Track Segment constitutes § 10906 excepted track over which the Board has exclusive jurisdiction under § 10501(b)(2).

NELMD’s petition for a declaratory order that the Board lacks jurisdiction over the Track Segment is accordingly denied.

It is ordered:

1. NELMD’s request for leave to file a surreply is denied. NELMD’s surreply and DSRR’s rebuttal thereto are not accepted into the record.
2. NELMD’s petition for a declaratory order is denied.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

new markets; whether there is regularly scheduled service; and traffic volume); Port City Props., 518 F.3d at 1189 (considering similar factors).

¹³ Under § 10906, a rail carrier providing transportation subject to Board’s jurisdiction may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks without the approval of the Board.

¹⁴ NELMD asserts that any operations DSRR may be performing on the Track Segment “are not vital for-hire operations that are needed to satisfy DSRR’s rail common carrier obligations.” (Pet. 15.) NELMD overlooks that uses of excepted track under § 10906 may include activities such as staging and storing rail equipment, and that there is no requirement that the uses of excepted track must constitute “vital for-hire operations.” See, e.g., Fox, FD 35161, slip op. at 5 (describing Union Pacific Railroad Company uses of excepted track over time, as part of the national rail system, as staging and storing rail equipment for customers, storing cabooses, and use as a car repair site).