

Pepper Hamilton LLP
Attorneys at Law

Hamilton Square
600 Fourteenth Street, N.W.
Washington, DC 20005-2004
202.220.1200
Fax 202.220.1665

217965
217966

Marc D. Machlin
202-220-1439
machlinm@pepperlaw.com

October 27, 2006

By Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
OCT 30 2006
Part of
Public Record



Re: Finance Docket No. 34792, Portland & Western Railroad, Inc. –
Acquisition and Operation Exemption – Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above caption proceeding are an original and 11 copies of Portland & Western Railroad, Inc.'s Verified Notice of Exemption. Also enclosed is a check in the amount of \$1,500 to cover the filing fee.

Please date stamp the extra copy of the Verified Notice and return it with our messenger.

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

Marc D. Machlin

Marc D. Machlin

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34792

PORTLAND & WESTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
UNION PACIFIC RAILROAD COMPANY

FILED
OCT 27 2006
SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF

PORTLAND & WESTERN RAILROAD, INC.
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.

217965
ENTERED
Office of Proceedings
OCT 30 2006
Part of
Public Record

AND

REQUEST OF PORTLAND & WESTERN RAILROAD, INC.
FOR WAIVER OF NOTICE REQUIREMENTS OF 49 C.F.R. § 1150.42(e)

Expedited Consideration Requested

FILE RECEIVED
OCT 27 2006
SURFACE
TRANSPORTATION BOARD

Marc D. Machlin
Sean P. Bamford
PEPPER HAMILTON LLP
Hamilton Square, Suite 500
600 Fourteenth Street, N.W.
Washington, DC 20005
(202) 220-1439

217966
*Attorneys For Portland & Western Railroad,
Inc.*

Dated: October 27, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34792

PORTLAND & WESTERN RAILROAD, INC.
– ACQUISITION AND OPERATION EXEMPTION –
UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
PORTLAND & WESTERN RAILROAD, INC.
PURSUANT TO 49 C.F.R. § 1150.41, ET SEQ.**

Pursuant to 49 U.S.C. § 10902 and under the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. § 1150.41 *et seq.*, Portland & Western Railroad, Inc. (“P&W”), a Class III carrier, submits this notice of exemption from the prior review and approval requirements of 49 U.S.C. § 10902. This notice covers P&W’s acquisition of a permanent, exclusive rail freight operating easement from Union Pacific Railroad Company (“UP”) over an approximately 5 miles of rail line in Oregon between Tigard and Beaverton (the “Subject Line”).

The proposed transaction will allow P&W to obtain a perpetual rail easement and to continue operating with this easement; however, this transaction will result in no changes in P&W’s existing freight rail operations. P&W has been

operating over the Subject Line and on other inter-connected or nearby rail lines since the 1990s. The proposed transaction will change P&W's property interest in the Subject Line, but P&W will continue to operate over the Subject Line as the only common carrier providing rail freight service.

Currently, P&W conducts local and overhead freight operations on the Subject Line pursuant to a lease with UP. P&W separately holds overhead trackage rights on the Subject Line; these trackage rights were granted by the BNSF Railway Company ("BNSF"). Under the proposed transaction, P&W will acquire an exclusive freight operating easement from UP and will operate on the Subject Line pursuant to that easement. The P&W/UP lease will be terminated to the extent it applies to the Subject Line; P&W's other trackage rights will remain in place, as will P&W's rights as a lessee on other UP-owned rail segments. Ultimately, there will be no changes in the current operations of P&W as a result of this transaction.

With respect to the Subject Line, UP will not only convey a perpetual easement for freight rail operations to P&W, but will transfer other interests in the real estate and other assets to Washington County, Oregon ("County"). County intends to transfer these assets to the Tri-County Metropolitan Transportation District of Oregon ("Tri-Met"). Eventually, this will enable Tri-Met to provide commuter rail service on the Subject Line pursuant to a Shared Use Agreement

with P&W. Tri-Met and County have initiated a separate proceeding before the Board. They are seeking to confirm that their acquisition of the physical assets of the Subject Line will not subject them to the Board's jurisdiction, since P&W will remain in place as the sole common carrier and the sole provider of freight rail services. (See Joint Motion To Dismiss Of Tri-Met and Washington County filed October 25, 2006 in Finance Docket No. 34810 and Finance Docket No. 34791.)

In accordance with the requirements of 49 C.F.R. § 1150.43, P&W states as follows:

49 C.F.R. § 1150.42
CLASS III CARRIER

With the revenue from operation of the Subject Line, Applicant's projected annual revenue will not exceed the annual revenue of a Class III railroad.

49 C.F.R. § 1150.42(e)
ADVANCE NOTICE

P&W's projected annual revenue does exceed \$5 million. Accordingly, unless the Board grants a waiver, the 60 day notice requirement of 49 C.F.R. § 1150.42(e) would apply to this transaction. P&W, however, is seeking a waiver of this provision since the proposed transaction will not alter P&W's operations and will have no adverse impact on employees of P&W or UP. This waiver request is set forth in Exhibit D to this Verified Notice.

49 C.F.R. § 1150.43(a)
FULL NAME AND ADDRESS

Applicant's full name and address:

Portland & Western Railroad, Inc.
ATTN: Bruce Carswell
President and General Manager
650 Hawthorne Avenue, S.E.
Salem, OR 97301

49 C.F.R. § 1150.43(b)
APPLICANT'S REPRESENTATIVE

Applicant's representative:

Marc D. Machlin
Pepper Hamilton LLP
Hamilton Square
600 Fourteenth Street, NW
Washington, DC 20005

49 C.F.R. § 1150.43(c)
AGREEMENT HAS BEEN REACHED

UP has agreed to transfer a permanent, exclusive rail freight operating easement on the Subject Line to P&W.

49 C.F.R. § 1150.43(d)
OPERATOR

The operator of the Subject Line will be P&W.

49 C.F.R. § 1150.43(e)
SUMMARY OF THE PROPOSED TRANSACTION

No changes in existing rail freight operations and service will result from the proposed transaction. P&W will continue to provide service to shippers on the Subject Line in the same manner that it does today.

(1) The name and address of the railroad transferring the subject property to the Class III applicant is:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

(2) The parties plan to consummate the transaction on or before November 27, 2006.

(3) The Subject Line extends from approximately milepost 749.95 in Tigard, Oregon to approximately milepost 755.43 in Beaverton, Oregon.

(4) P&W will acquire a permanent, exclusive rail freight operating easement on approximately 5 route miles of rail line.

49 C.F.R. § 1150.43(f)
MAP

A map of the Subject Line is attached hereto as Exhibit A.

49 C.F.R. § 1150.43(g)
CERTIFICATE OF COMPLIANCE

A certificate of compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached hereto as Exhibit B.

49 C.F.R. § 1150.44
CAPTION SUMMARY

A caption summary, as required by 49 C.F.R. § 1150.44, is attached hereto as Exhibit C.

49 C.F.R. Part 1105
ENVIRONMENTAL/HISTORIC PRESERVATION DATA

Under 49 C.F.R. § 1105.6(c)(2), the proposed acquisition by P&W is exempt from environmental reporting requirements. P&W's acquisition of the Subject Line, if subject to the Board's jurisdiction, would not result in any significant changes in carrier operations (*i.e.*, changes which exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5)).

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition by P&W also is exempt from historic preservation reporting requirements. P&W's acquisition of the freight easement will not alter any existing common carrier obligations on the Subject Line. Furthermore, Board approval is required to

abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Respectfully submitted,

By: Marc D. Machlin

Marc D. Machlin

Sean P. Bamford

PEPPER HAMILTON LLP

Hamilton Square, Suite 500

600 Fourteenth Street, N.W.

Washington, DC 20005

(202) 220-1200

*Attorneys For Portland & Western Railroad,
Inc.*

Dated: October 27, 2006

EXHIBIT A

MAP OF THE SUBJECT LINE

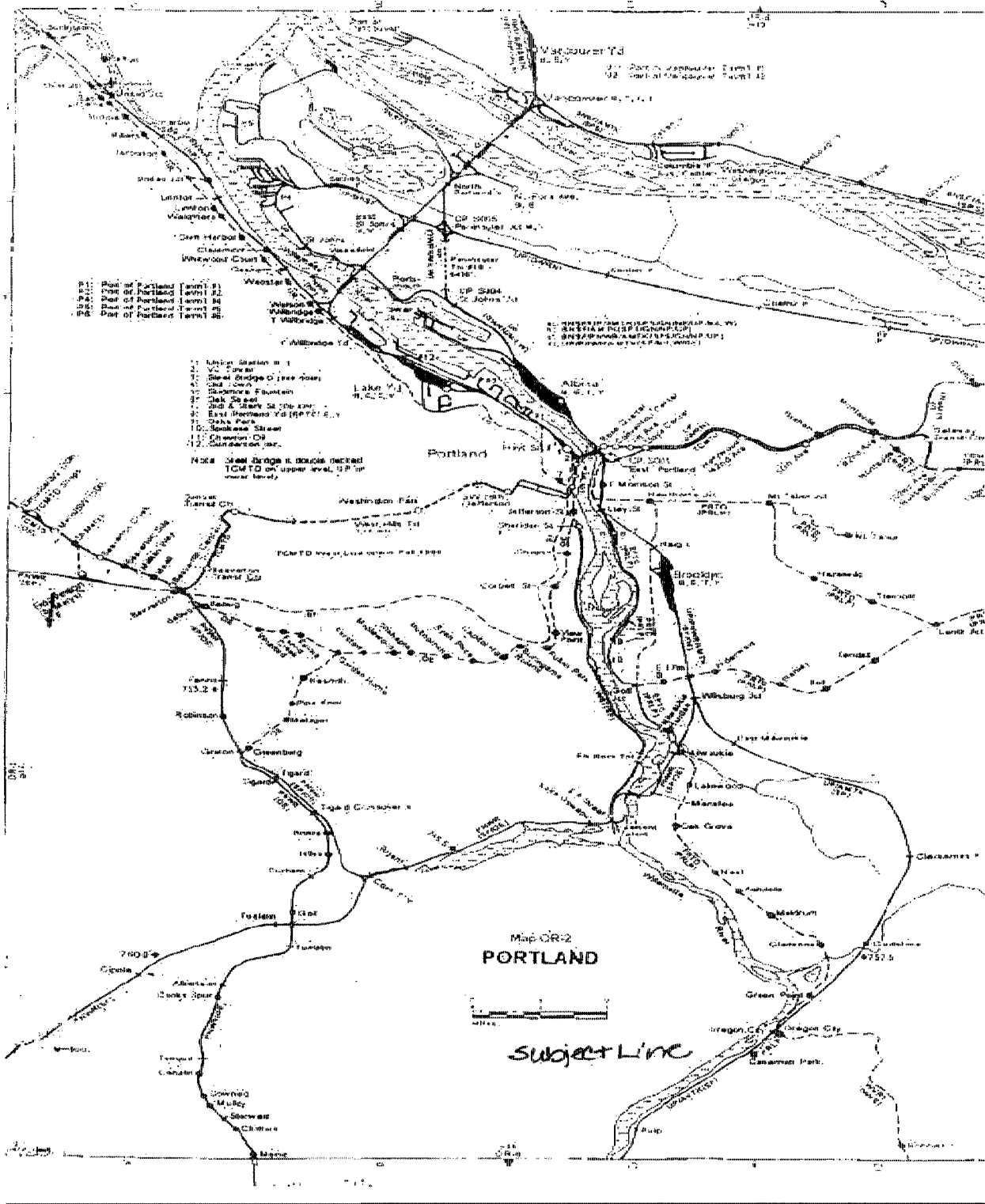
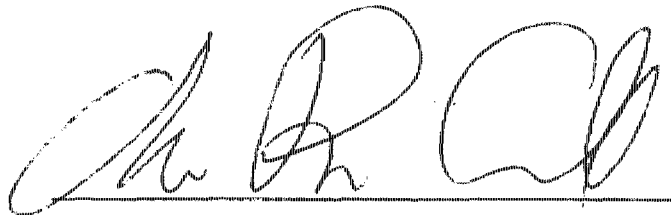


EXHIBIT B

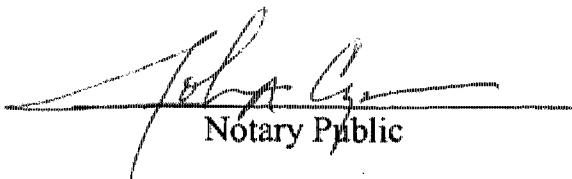
CERTIFICATION

State of Oregon)
) SS:
County of Marion)

I, Allan Bruce Carswell, being duly sworn, depose and state that I am President of Portland & Western Railroad, Inc., and that the projected annual revenues from the rail operations of Portland & Western Railroad, Inc. will not result in the creation of a Class II or Class I rail carrier.



SUBSCRIBED AND SWORN TO
before me this 27th day of October 2006.



Notary Public

My Commission expires:

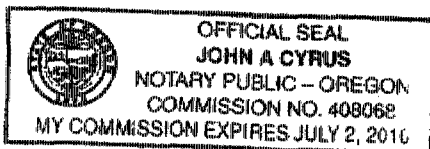


EXHIBIT C

CAPTION SUMMARY

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34792

PORTLAND & WESTERN RAILROAD, INC.
– ACQUISITION AND OPERATION EXEMPTION –
UNION PACIFIC RAILROAD COMPANY

The Portland & Western Railroad, Inc. (“P&W”) has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire a permanent, exclusive rail freight operating easement from Union Pacific Railroad Company (“UP”), and P&W will operate such line pursuant to that easement. The line extends between approximately milepost 749.95 in Tigard, Oregon to approximately milepost 755.43 in Beaverton, Oregon, a distance of approximately 5 route miles. The transaction is scheduled to be consummated on or before November 27, 2006.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten (10) copies of all pleadings referring to STB Finance Docket No. 34792 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington DC 20423-0001. In addition, a copy of each pleading must be served on Marc D. Machlin, Pepper Hamilton LLP, 600 Fourteenth Street, NW, Washington, DC 20005.

EXHIBIT D

**REQUEST FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34792

PORTLAND & WESTERN RAILROAD, INC.
– ACQUISITION AND OPERATION EXEMPTION –
UNION PACIFIC RAILROAD COMPANY

Pursuant to 49 C.F.R. § 1110.9, Portland & Western Railroad, Inc. (“P&W”), a Class III carrier, hereby petitions the Surface Transportation Board (“Board”) to waive the employee notice requirements of 49 C.F.R. § 1150.42(e).

P&W is concurrently filing with the Board a notice of exemption from the prior review and approval requirements of 49 U.S.C. § 10902. This notice applies to P&W's acquisition of and operation over a permanent, exclusive rail freight operating easement granted by Union Pacific Railroad Company (“UP”) over an approximately 5 miles of rail line between Tigard, Oregon and Beaverton, Oregon (the “Subject Line”).

P&W is a Class III carrier with annual revenues in excess of \$5 million. Under 49 C.F.R. § 1150.42(e), P&W ordinarily would be required to give sixty days notice to employees working on the Subject Line. Such notice would have to be posted at the workplace and served on the national offices of the labor unions representing the employees on the Subject Line. 49 C.F.R. § 1150.42(e). The notice would identify any available jobs and provide information on the terms of employment and the principles of employee selection. *Id.*

As explained below, a waiver of this requirement is appropriate here because the proposed transaction will have no adverse effects on rail employees of P&W or UP. P&W already operates on the Subject Line as the sole common carrier and, after this transaction, will continue to operate on the Subject Line as the sole common carrier. Instead of operating as a lessee, P&W will operate as an easement holder under a perpetual freight rail easement. In these circumstances, and in light of Tri-Met's desire to close certain related transactions by no later than November 27, 2006, the 60 day notice requirement should be waived.

In adopting the notice requirement, the Board specifically recognized that "situations may occur necessitating acquirer requests for waiver of the 60 day notice provision. . . ." *See* Ex Parte No. 562, *Acquisition of Rail Lines Under 49 U.S.C. 10901 & 10902- Advance Notice of Proposed Transactions*, 1997 STB LEXIS 343 (Sept. 9, 1997). The Board later confirmed that it will entertain

requests for waiver of the 60 day notice requirement set forth in 49 C.F.R. § 1150.42(e) and the similar requirement under 49 C.F.R. § 1150.32(e), where appropriate. *See, e.g., Lake Michigan & Indian Railroad LLC--Acquisition and Operation Exemption--Keystone Railroad, Inc.* Finance Docket No. 34140 (STB served Dec, 27, 2001) (granting waiver of the 60 day notice requirement where the record indicated that there would be no adverse effect on the employees of the acquired rail carrier).

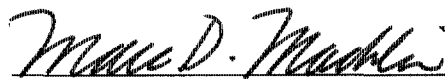
As noted above, a waiver of the 60 day notice is justified here because the transaction will not have any adverse effects on P&W or UP employees. Under the proposed transaction, P&W's property interest in the Subject Line will be converted from a leasehold to an exclusive rail freight operating easement. P&W, however, will continue to operate on the Subject Line as the sole common carrier. Furthermore, no jobs will be abolished or relocated as a result of the proposed transaction. Consequently, no purpose would be served by the posting of the 60 day labor notice.

In similar cases, the Board has granted waiver requests. *See Dakota, Missouri Valley and Western Railroad, Inc.--Lease and Operation Exemption--Soo Line Railroad Company*, Finance Docket No. 34904 (STB served July 24, 2006) (granting waiver where the transaction, a lease renewal, would have no effect on employees); *Kansas & Oklahoma Railroad, Inc.--Lease Exemption--*

Union Pacific Railroad Company, Finance Docket No. 34746 (STB served Sept. 15, 2005) (granting waiver where the transaction, a purchase of a line by K & O Railroad, which it had leased, would have no effect on employees). In this instance, a waiver of the 60 day notice requirement also is necessary in order to accommodate Tri-Met, a public body seeking to provide commuter service over the Subject Line; Tri-Met is seeking to consummate related transactions by no later than November 27, 2006.

For the foregoing reasons, P&W respectfully requests a waiver from the 60 day notice requirement of 49 C.F.R. § 1150.42(e).

Respectfully submitted,



Marc D. Machlin

Sean P. Bamford

PEPPER HAMILTON LLP

Hamilton Square, Suite 500

600 Fourteenth Street, N.W.

Washington, DC 20005

(202) 220-1200

*Attorneys For Portland & Western Railroad,
Inc.*

Dated: October 27, 2006

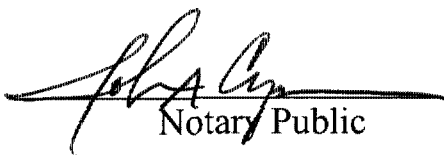
VERIFICATION

State of Oregon)
) SS:
County of Marion)

Allan Bruce Carswell, being duly sworn, deposes and says that he is President of Portland & Western Railroad, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

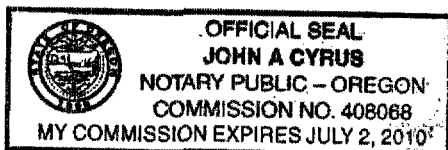


SUBSCRIBED AND SWORN TO
before me this 25th day
of October 2006.



Notary Public

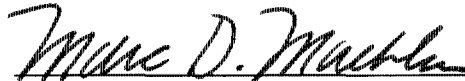
My Commission expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October 2006, copies of the foregoing Verified Notice Of Exemption Of Portland & Western Railroad, Inc. were served by first-class mail on the following persons:

Kevin M. Sheys
Janie Sheng
Kirkpatrick & Lockhart Nicholson Graham LLP
1601 K Street, N.W.
Washington, D.C. 20006



Marc D. Machlin