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208841

4 September 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

SEP 05 2003

Part of
Public Record

Re: Camas Prairie RailNet, Inc. -- Abandonment --
in Lewis, Nez Perce, and Idaho Counties, ID,
AB-564;
request for extension of abandonment consummation
date and for such other relief as is necessary or
appropriate

Action requested by September 13, 2003

Dear Mr. Secretary:

This letter is on behalf of BG and CM Railroad, Inc. Insofar as Camas Prairie RailNet, Inc. ("Camas Prairie") is involved, counsel is authorized to state that Camas Prairie concurs and joins in the requested relief.

Regulatory facts. Camas Prairie applied to abandon the line of railroad at issue in this proceeding (MP 0.00 near Spalding, Idaho) to MP 66.8 (end of line, near Grangeville, Idaho) on or about May 26, 2000. On September 13, 2000, subject to historic preservation/environmental conditions, the STB authorized abandonment or railbanking (pursuant to 16 U.S.C. § 1247(d)). By December of 2002, the last of the environmental and historic preservation conditions had been met, and Camas Prairie commenced salvage. In the interim, however, Camas Prairie reached a railbanking agreement¹ with BG and CM Railroad, as permitted by a substitute CITU served in this proceeding on January 6, 2003. Pursuant to that agreement, BG and CM Railroad acquired fixed assets and real estate interests necessary for rail operations from Camas Prairie for the line.

In a decision served September 13, 2002, STB extended the time in which Camas Prairie could exercise its abandonment authority until September 13, 2003.

¹ Agreement for Sale of Certain Assets of Camas Prairie RailNet, Inc. to Mike Williams.

Camas Prairie has not exercised its abandonment authority. Under the railbanking authority issued by this Board, Camas Prairie has reached a railbanking agreement with BG and CM Railroad. Camas Prairie has assigned its right to operate (reactivate service upon) the line to BG and CM Railroad, contingent as a matter of law on BG and CM Railroad obtaining any necessary authority from this Board for that purpose.

Recent developments. BG and CM Railroad -- the interim trail manager -- has met with several local shippers and by now the county governments on the line. Based upon its analysis, BG and CM Railroad concludes that common carrier rail services on the line remain uneconomic at this time, and BG and CM Railroad in no event wishes to be a common carrier railroad on the line, subject to common carrier obligations or STB abandonment authority as provided in 49 U.S.C. §§ 10903, et seq. However, BG and CM Railroad believes that it can provide marginally economic contract rail services, as opposed to common carrier rail services, during the fall grain rush (roughly from September through January), for the portion of the line between MP 0.00 and MP 52.0.²

BG and CM Railroad is preparing to make two filings with STB: (a) a Notice of Exemption under 49 C.F.R. § 1150.31, et seq., to acquire the operating rights (or right to reactivate rail service) on the line;³ and (b) a Petition for Exemption from Certain Requirements of 49 U.S.C. Subtitle IV, pursuant to 49 U.S.C. § 10502. In the Petition, BG and CM Railroad plans to seek an exemption from abandonment authorization requirements, common carrier obligations and related regulations.⁴ The objective will be to allow the line to be operated as a contract carrier rather than common carrier, and to minimize regulatory burdens to exit should contract operation

² The remainder of the line would remain railbanked.

³ As noted, BG and CM Railroad has already acquired the necessary assets pursuant to the railbanking authorization, so no additional order or authorization should be necessary to acquire the assets. The agreement also provides that BG and CM Railroad has acquired the operating rights. The parties take the position that the railbanking authorization was sufficient to authorize transfer of both assets and rights as to operation (reactivate rail service). BG and CM Railroad currently intends to file the notice only as a precaution.

⁴ BG and CM Railroad wishes to preserve the authority of the Board to railbank MP 0.0 to MP 52.0 should contract rail service not work out. Thus BG and CM Railroad does not at this time anticipate a complete exemption from this Board's abandonment jurisdiction, but something more akin to so-called "modified PCN" operations under 49 C.F.R. § 1150.21, et seq.

prove economically infeasible to BG and CM Railroad.⁵ BG and CM Railroad is currently seeking supportive letters from the relevant shippers and local governments, and projects making the two filings in the near future. Examples of some of these letters are attached.

As noted, BG and CM Railroad does not wish to become a common carrier. BG and CM Railroad thus does not wish to risk being deemed a common carrier before this Board acts on its Petition for Exemption. BG and CM Railroad understands that it may take the Board 90 days or more to take initial action on the Petition.

Unfortunately, the fall grain rush is commencing now. BG and CM Railroad wishes to be in a position to arrange rail service to the elevators using Camas Prairie crews and equipment as a contractor until STB has had an opportunity to act upon the Petition for Exemption which BG and CM Railroad intends to file. Camas Prairie is willing to provide such service in order to facilitate BG and CM Railroad's effort so long as Camas Prairie does not become a common carrier on the line.

Request. The major grain elevators on the line represent to BG and CM Railroad that they wish rail service. Because of the economic risks, BG and CM Railroad does not wish to become a common carrier. However, BG and CM Railroad is prepared to offer contract rail services. BG and CM Railroad is preparing to seek authority to provide service on that basis. Camas Prairie is prepared to provide crews and equipment until this agency acts upon BG and CM Railroad's request, provided Camas Prairie does not lose the benefits of the abandonment and railbanking authorizations previously issued by STB.

BG and CM Railroad believes that Camas Prairie can continue to provide services without disabling its prior abandonment and railbanking authorization (and without triggering some new obligation to obtain an abandonment or discontinuance authorization) so long as this Board extends the time in which Camas Prairie may exercise its abandonment authority from September 13, 2003, until February 13, 2004 (six months). Rail service can then be deemed to be under previous authority, and not prejudice the abandonment authorization nor trigger a common carrier obligation on the part of BG and CM Railroad.

In lieu of this characterization, if BG and CM is viewed as

⁵ The relief sought by BG and CM Railroad will be similar to that granted in cases such as Dakota Rail, Inc. -- Petition for Exemption from 49 U.S.C. 10901, 10903, and 11301, F.D. 3071, Oct. 31, 1985.

the common carrier under the proposed arrangement,⁶ then GB and CM should be viewed as having acquired the line subject to the abandonment authorization, and as entitled to consummate the abandonment within whatever period is authorized by this Board.⁷

BG and CM, joined by Camas Prairie, thus requests an extension of the time in which to consummate abandonment until February 13, 2004, for the reasons stated.

If any other temporary exemption or relief is necessary to permit rail service to be provided without triggering the need to obtain additional abandonment authority at this time, the parties also request that.

Conclusion. BG and CM Railroad believes that the situation presented is rather unusual and perhaps unique. BG and CM Railroad seeks the Board's assistance in facilitating a solution to provide rail service on an economic basis to the major shippers on this very attractive but unfortunately very marginal line.

I am authorized to state that Mr. Heffner, counsel for Camas Prairie RailNet, Inc., has reviewed this letter and concurs in the relief requested. It is my understanding that Mr. Heffner will confirm his concurrence in a separate letter. By my signature below, I certify service upon him by fax (202-296-3939).⁸

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
for BG and CM Railroad (interim
trail manager)

cc. David Konschnik, Director, Office of Proceedings

⁶ Although BG and CM Railroad has not filed a notice of exemption under 49 C.F.R. § 1150.31 to acquire the assets and operating rights to the line, the STB did issue a railbanking authorization, and BG and CM Railroad acquired the assets and operating rights pursuant to that authorization. See note 3.

⁷ See Trinidad Railway, Inc. -- Exemption -- in Las Animas County, CO, AB 573X, served August 13, 2001 (authorizes A&K affiliate to acquire rail line and employ two-year out of service exemption obtained by predecessor railroad).

⁸ A copy was also mailed by U.S. Mail to Mr. Heffner at 1920 N Street, N.W., Suite 800, Washington, D.C. 20036.



8/22/03

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20433

Re: BG & CM Railroad Petition for Exemption

Dear Mr. Williams:

This letter is on behalf of Primeland Cooperatives a division of CHS, Inc.. In the past we have been a major shipper of agricultural commodities on the rail line between Spaulding, and Grangeville, in Lewis, Nez Perce, and Idaho Counties, Idaho loading outbound grain movements.

We support the Petition for Exemption filed by BG & CM Railroad, and relief requested therein. In order to make a last effort to provide rail service, BG & CM Railroad needs to minimize its risks should unexpected costs arise, or should rail demand prove insufficient. We understand BG & CM's position, and accordingly support (1) an exemption from Surface Transportation Board regulation of abandonment of the line by BG & CM (including any requirement for any kind of Board approval of abandonment), and (2) and exemption from any general common carrier obligation under 49 U.S.C. 11101 should BG & CM restore service to the line.

Because we would like service to be available for this fall's grain season, we request that the Board act expeditiously and favorably upon BG & CM Railroads petition for exemption.

We have authorized BG & CM Railroad to file this letter with its Petition in order to foster the Board's granting of the Petition.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ken Blakeman', is written over a horizontal line.

Ken Blakeman
General Manager
Primeland Cooperatives
A Division of CHS Inc.

1200 Snake River Ave.
P.O. Box 467
Lewiston, ID 83501

A Division of CHS Cooperatives
www.primelandcoop.com

(208) 743-8551
1-800-456-8551
fax: (208) 746-0721

August 14, 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20433

RE: BG & CM Railroad Petition for Exemption

Dear Mr. Williams:

This letter is on behalf of Columbia Grain Growers. In the past, we have been a major shipper of agricultural commodities and produce on the rail line between Spalding, and Grangeville, in Lewis, Nez Perce and Idaho Counties, Idaho. Loading outbound grain movements.

We support the Petition for Exemption filed by BG & CM Railroad, and relief requested therein. In order to make a last effort to provide rail service, BG & CM Railroad needs to minimize its risks should unexpected costs arise, or should rail demand prove insufficient. We understand BG & CM's position, and accordingly support (1) an exemption from Surface Transportation Board regulation of abandonment of the line by BG & CM (including any requirement for any kind of Board approval of abandonment), and (2) and exemption from any general common carrier obligation under 49 U.S.C. 11101 should BG & CM restore service to the line.

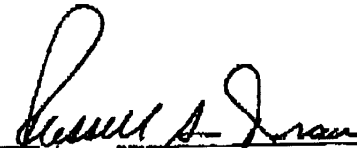
Because we would like service to be available for this fall's grain season, we request that the Board act expeditiously and favorably upon BG & CM Railroad's petition for exemption.

We have authorized BG & CM Railroad to file this letter with its Petition in order to foster this Board's granting of the Petition.

Very Truly,

Name:

Title:



U.P. Columbia Grain INC

ALICE MATTSON, FIRST DISTRICT
KOOSKIA, IDAHO

PAT HOLMBERG, SECOND DISTRICT
GRANGEVILLE, IDAHO

GEORGE ENNEKING, THIRD DISTRICT
COTTONWOOD, IDAHO

BOARD OF COUNTY COMMISSIONERS

Phone (208) 983-2751

IDAHO COUNTY
320 W. Main • GRANGEVILLE, IDAHO 83530

FAX Number: (208) 983-1428

September 2, 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K. Street NW
Washington, D.C. 20433

RE: BG & CM Railroad Petition for Exemption

Dear Mr. Williams:

This letter is on behalf of Idaho County. We support the Petition for Exemption filed by BG & CM Railroad, and the relief requested therein. BG & CM Railroad has informed us that it is prepared to make a last effort to provide rail service to our shippers, provided that its risks are minimized, and in particular provide it is able to abandon the line without further proceedings should unexpected costs arise or shipments not materialize. In addition, BG & CM Railroad has indicated that it can only control its costs if it is permitted to negotiate individual contracts with particular shippers rather than be subject to a general common carrier obligation. In the circumstances presented, we support (1) an exemption from Surface Transportation Board regulation of abandonment of the line by BG & CM (including any requirement for any kind of Board approval of abandonment), and (2) an exemption from any general common carrier obligation under 49 U.S.C. 11101 should BG & CM restore service to the line.

Because we would like service to be available for this fall's grain season, we request that the Board act expeditiously and favorably upon BG & CM Railroad's petition for exemption.

We have authorized BG & CM Railroad to file this letter with its Petition in order to foster this Board's granting of the Petition.

Very Truly,

Pat Holmberg
Pat Holmberg, Chairman
Alice Mattson
Alice Mattson, Commissioner
George Enneking
George Enneking, Commissioner





August 14, 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K. Street NW
Washington, D.C. 20433

RE: BG & CM Railroad Petition for Exemption

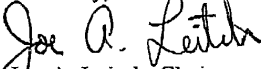
Dear Mr. Williams:

This letter is on behalf of Lewis County. We support the Petition for Exemption filed by BG & CM Railroad, and the relief requested therein. BG & CM Railroad has informed us that it is prepared to make a last effort to provide rail service to our shippers, provided that its risks are minimized, and in particular provide it is able to abandon the line without further proceedings should unexpected costs arise or shipments not materialize. In addition, BG & CM Railroad has indicated that it can only control its costs if it is permitted to negotiate individual contracts with particular shippers rather than be subject to a general common carrier obligation. In the circumstances presented, we support (1) an exemption from Surface Transportation Board regulation of abandonment of the line by BG & CM (including any requirement for any kind of Board approval of abandonment), and (2) an exemption from any general common carrier obligation under 49 U.S.C. 11101 should BG & CM restore service to the line.

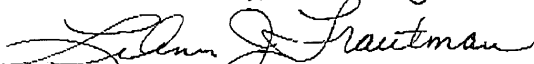
Because we would like service to be available for this fall's grain season, we request that the Board act expeditiously and favorably upon BG & CM Railroad's petition for exemption.

We have authorized BG & CM Railroad to file this letter with its Petition in order to foster this Board's granting of the Petition.

Sincerely,


Joe A. Leitch, Chairman


Charles E. Doty, Member


LeAnn J. Trautman, Member



NEZ PERCE COUNTY

BOARD OF COUNTY COMMISSIONERS

August 14, 2003

1225 Idaho Street
P.O. Box 896
Lewiston, Idaho 83501-0896
(208) 799-3080
FAX (208) 799-3149

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K. Street NW
Washington, D.C. 20433

RE: BG & CM Railroad Petition for Exemption

Dear Mr. Williams:

This letter is on behalf of Nez Perce County. We support the Petition for Exemption filed by BG & CM Railroad, and the relief requested therein. BG & CM Railroad has informed us that it is prepared to make a last effort to provide rail service to our shippers, provided that its risks are minimized, and in particular provide it is able to abandon the line without further proceedings should unexpected costs arise or shipments not materialize. In addition, BG & CM Railroad has indicated that it can only control its costs if it is permitted to negotiate individual contracts with particular shippers rather than be subject to a general common carrier obligation. In the circumstances presented, we support (1) an exemption from Surface Transportation Board regulation of abandonment of the line by BG & CM (including any requirement for any kind of Board approval of abandonment), and (2) an exemption from any general common carrier obligation under 49 U.S.C. 11101 should BG & CM restore service to the line.

Because we would like service to be available for this fall's grain season, we request that the Board act expeditiously and favorably upon BG & CM Railroad's petition for exemption.

We have authorized BG & CM Railroad to file this letter with its Petition in order to foster this Board's granting of the Petition.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Larry Vincent
Larry Vincent, Chairman

J.R. Van Tassel
J.R. Van Tassel, Member

Ronald J. Wittman
Ronald J. Wittman, Member

BCC/jrv

J.R. Van Tassel
First District

Irwin H. Caulfield
Second District

Larry Vincent
Third District

Petty O. Weeks
Clerk