

DAD# 0601257001

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THOMAS F. MCFARLAND



May 23, 2002

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

205 476

Re: Finance Docket No. 34214, Wallowa County, Oregon -- Acquisition
and Operation Exemption -- Rail Line of Idaho Northern & Pacific Railroad
Company between Elgin and Joseph, OR

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Verified Notice of Exemption Under 49
C.F.R. § 1150.31, for filing with the Board in the above referenced matter.

Also enclosed is a check for \$1,300 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland

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FILED

MAY 24 2002

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

MAY 24 2002

Part of
Public Record

-1-

FEE RECEIVED

MAY 24 2002

SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

WALLOWA COUNTY, OREGON --)
ACQUISITION AND OPERATION) FINANCE DOCKET
EXEMPTION -- RAIL LINE OF IDAHO) NO. 34214
NORTHERN & PACIFIC RAILROAD)
COMPANY BETWEEN ELGIN AND)
JOSEPH, OR)



VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

ENTERED
Office of the Secretary

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FILED

MAY 24 2002

SURFACE
TRANSPORTATION BOARD

WALLOWA COUNTY, OREGON
101 South River Street, Room 100
Enterprise, OR 97828
(541) 426-4543

Applicant

FEE RECEIVED

MAY 24 2002

SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Applicant

DATE FILED: May 24, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

WALLOWA COUNTY, OREGON --	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION -- RAIL LINE OF IDAHO	)	NO. <u>34214</u>
NORTHERN & PACIFIC RAILROAD	)	
COMPANY BETWEEN ELGIN AND	)	
JOSEPH, OR	)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to the class exemption codified at 49 C.F.R. § 1150.31, *et seq.*, WALLOWA COUNTY, OREGON (the County), a noncarrier, hereby files this verified notice of exemption from the prior approval requirements of 49 U.S.C. § 10901 for its acquisition from IDAHO NORTHERN & PACIFIC RAILROAD COMPANY (INPR) and operation of a line of railroad that extends between Milepost No. 21.0 at or near Elgin and Milepost 83.58 at or near Joseph, a distance of 62.58 miles in Wallowa and Union Counties, Oregon (Joseph rail line).

JURISDICTION OF BOARD

The Board has issued an exemption for abandonment of all but two miles of the Joseph rail line, but INPR has not consummated that abandonment. Consequently, the entire Joseph rail line remains subject to the jurisdiction of the Board, and is eligible for acquisition under the class exemption from 49 U.S.C. § 10901, as codified at 49 C.F.R. § 1150.31, *et seq.*

By decision served March 12, 1997, in STB Docket No. AB-433X, *Idaho Northern & Pacific Railroad Company -- Abandonment Exemption -- in Wallowa and Union Counties, OR*, the Board issued an exemption from 49 U.S.C. § 10903 for abandonment of 60.58 miles of the

Joseph rail line, i.e., between Milepost Nos. 23.0 and 83.58. In a decision in that docket served December 13, 2001, the Board denied a petition to reopen the proceeding, removed previously-imposed environmental conditions, and imposed a new condition, i.e, that INPR may commence salvage of the 60.58-mile line so long as salvage is performed in accordance with a Work Plan for Track Removal, dated May 22, 2001, as revised June 22, 2001 (at 8, ordering paragraph 3).

INPR did not commence salvage of that portion of the Joseph rail line. Instead, INPR negotiated for sale of the entire Joseph rail line for continued rail operation. All track materials in the Joseph rail line remain in place. Thus, INPR did not consummate abandonment of any part of the Joseph rail line. That being the case, the Joseph rail line remains subject to the Board's jurisdiction.

EXEMPTIONS REQUIRED

Pursuant to a Purchase and Sale Agreement between the County and INPR entered into as of May, 2002 (the Sale Agreement), the County is to acquire the land in the right-of-way of the Joseph rail line upon payment of a portion of the purchase price at closing. The County is to acquire the track materials in the rail line upon payment of the remainder of the purchase price not later than one year after the closing. INPR will be the operator of the line until the later of (1) 90 days after full payment of the purchase price or (2) a new operator being designated and qualified to provide rail freight service on the line.

In accordance with the Board's reasoning in *Southern Pacific Transp. Co. - Abandonment*, 8 I.C.C.2d 495, 503-505 (1992), and cases there cited, the County requires an exemption for its acquisition of the rail line inasmuch as the line is not fully abandoned.

It is the County's position that the Board should exempt the County's operation of the rail line in addition to its acquisition. Under the reasoning in *Southern Pacific Transp. Co. - Abandonment, supra*, upon acquisition of the line the County will assume a residual common carrier obligation to provide rail service on the line in the event that INPR and any subsequent rail operator ceases to provide such service. The County can satisfy that obligation by contracting with another operator to provide the rail service or by operating the line itself. If the County presently has a residual obligation to operate the line, the County necessarily has a corresponding residual right to operate the line. It is that right to operate that should be exempted at this time rather than requiring another notice of exemption and filing fee in the event that the County exercises its residual operating right in the future by operating the line itself.

No exemption is required for INPR's operation of the rail line. Although INPR was authorized to discontinue such operation as part of the exemption for abandonment of the line, INPR did not exercise that authority. Such authority was permissive, not mandatory. *See, e.g., Maine Central R. Co. -- Aban. Exempt. -- in Androscoggin County, ME*, STB Docket No. AB-83 (Sub-No. 16X), decision served Sept. 15, 2000 (not printed), at 5. In addition, INPR retained, in the Purchase and Sale Agreement, a non-exclusive license to continue rail freight operations on the line. Consequently, INPR is already authorized to operate the line.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) *The full name and address of the applicant;*

Applicant is Wallowa County, Oregon, 101 South River Street, Room 100, Enterprise, OR 97828.

- (b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

Applicant's representatives is Thomas F. McFarland, Thomas F. McFarland, P.C., 208

South LaSalle Street, Suite 1890, Chicago, IL 60604-1194, (312) 236-0204.

- (c) *A statement that an agreement has been reached or details about when an agreement will be reached;*

An agreement has been reached regarding sale and operation of the rail line.

- (d) *The operator of the property;*

INPR will be the operator of the property. The County will have a residual common carrier obligation to operate the property.

- (e) *A brief summary of the proposed transaction, including:*

- (1) *The name and address of the railroad transferring the subject property;*

The transferor is INPR, 119 North Commercial Avenue, Emmett, ID 83617.

- (2) *The proposed time schedule for consummation of the transaction;*

The transaction is to be consummated not earlier than seven days after the filing of this notice at the Board.

- (3) *The mile-posts of the subject property, including any branch lines, and*

The rail line extends between Milepost No. 21.0 at or near Elgin, OR and Milepost No. 83.58 at or near Joseph, OR.

- (4) *The total route miles being acquired;*

A total of 62.58 route miles is being acquired.

- (f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and*

The required map is attached to this notice as Appendix 1.

- (g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier, and that such revenues would not exceed \$5 million per year.*

The required certificate is attached to this notice as Appendix 2.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.34 is attached to this notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORTING NOT REQUIRED

Pursuant to 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1), no environmental or historical reporting is required in conjunction with this matter.

NO LABOR PROTECTION CONDITIONS

Pursuant to 49 U.S.C. § 10901(c), no labor protection conditions are to be imposed in this matter.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should publish a notice of the filing of this exemption in the Federal Register within 30 days of such filing in accordance with 49 C.F.R. § 1150.32(b).

Respectfully submitted,

WALLOWA COUNTY, OREGON
101 South River Street, Room 100
Enterprise, OR 97828
(541) 426-4543

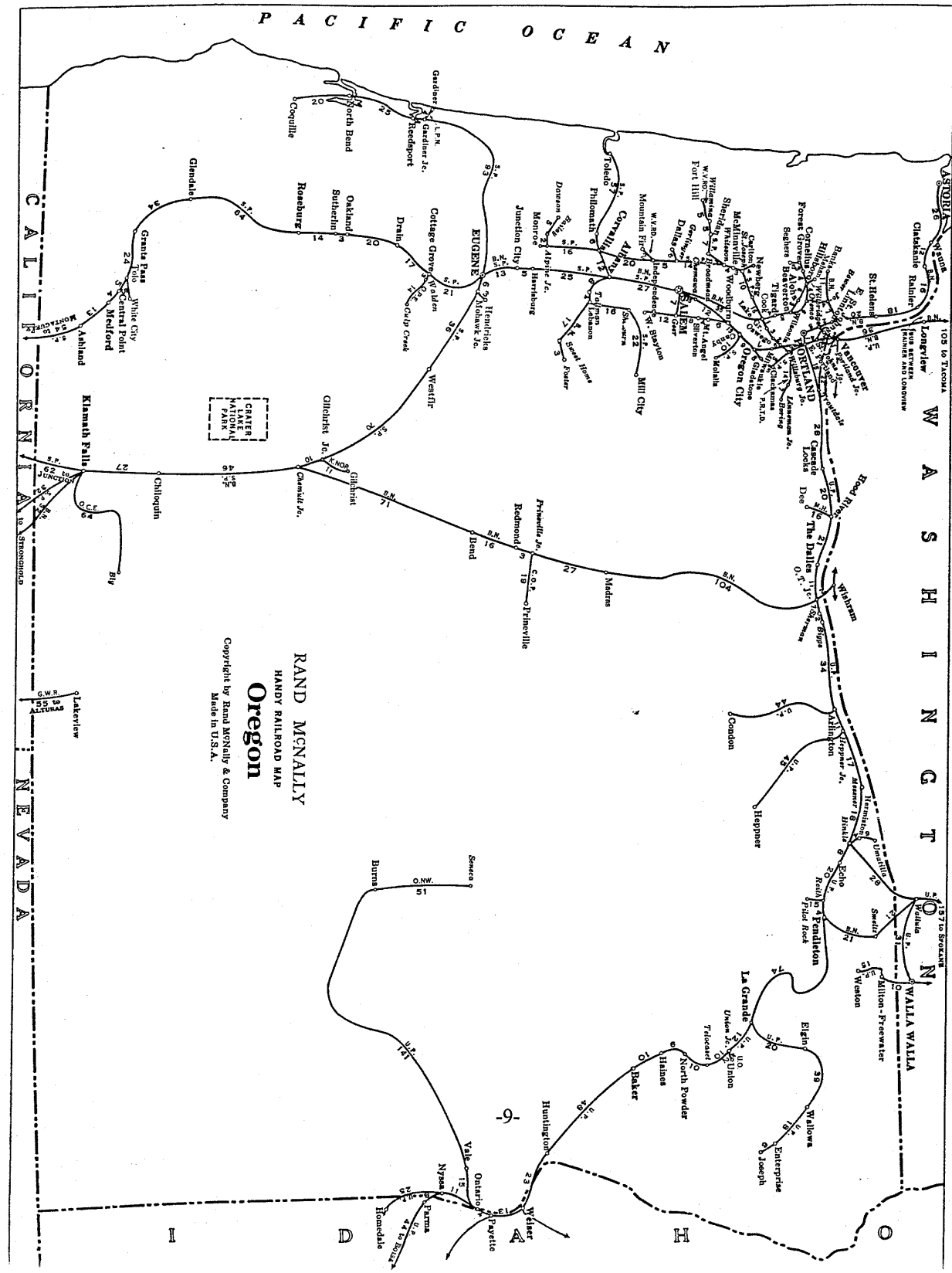
Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Applicant

DATE FILED: May 24, 2002



Finance Docket No. 34214

Appendix 2

CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Wallowa County, Oregon hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed \$5 million annually.



Thomas F. McFarland

Thomas F. McFarland
*Authorized Representative of
Wallowa County, Oregon*

SUBSCRIBED and SWORN to
before me this 23rd day of
May, 2002.

Kathleen Lenihan
Notary Public

Finance Docket No. 34214

Appendix 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. _____,

***WALLOWA COUNTY, OREGON
-- ACQUISITION AND OPERATION EXEMPTION --
RAIL LINE OF IDAHO NORTHERN & PACIFIC COMPANY
BETWEEN ELGIN AND JOSEPH, OR***

Wallowa County, OR (the County), a noncarrier, has filed a Notice of Exemption to acquire from Idaho Northern & Pacific Railroad Company (INPR) and operate a rail line extending between Milepost 21.0 at or near Elgin and Milepost 83.58 at or near Joseph, a distance of 62.58 miles in Wallowa and Union Counties, OR. Comments must be filed with the Board and be served on the County's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1194, (312) 236-0204.

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions 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.

By the Board

(SEAL)

Vernon A. Williams, Secretary

Finance Docket No. 34214

Appendix 4

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

Thomas F. McFarland, being duly sworn, states that he is attorney for Wallowa County, Oregon (the County); that he is familiar with the factual allegations made in the foregoing Notice of Exemption in behalf of the County; and that such allegations are true as stated.

Thomas F. McFarland

Thomas F. McFarland



SUBSCRIBED and SWORN to
before me this 23rd day of
May, 2002.

Kathleen Lenihan

Notary Public