

300519

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
April 1, 2020
Part of
Public Record

DOCKET NO. AB 1009 (SUB-NO. 2X)

MISSION MOUNTAIN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN FLATHEAD COUNTY, MONTANA

**PETITION FOR EXEMPTION OF
MISSION MOUNTAIN RAILROAD, L.L.C.**

FEE RECEIVED

April 1, 2020

SURFACE

TRANSPORTATION BOARD

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR MISSION MOUNTAIN
RAILROAD, L.L.C.**

Dated: April 1, 2020

FILED
April 1, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (SUB-NO. 2X)

MISSION MOUNTAIN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN FLATHEAD COUNTY, MONTANA

**PETITION FOR EXEMPTION OF
MISSION MOUNTAIN RAILROAD, L.L.C.**

Pursuant to 49 U.S.C. §§ 10502 and corresponding regulations at 49 C.F.R. part 1121 and § 1152.60, Mission Mountain Railroad, L.L.C. (“MMT”) hereby petitions the Board for an exemption from the formal prior approval requirements of 49 U.S.C. § 10903 to discontinue common carrier service over a line of railroad (the “Line”) owned by BNSF Railway Company (“BNSF”) and located in Flathead County, Montana. The Line extends from approximately milepost 1211.86 at the interchange with BNSF at Columbia Falls, Montana, southwest to milepost 1225.19 at Kalispell, Montana, a distance of approximately 13.33 route miles. A map showing the location of the Line is attached to this petition as Exhibit A. A draft *Federal Register* notice of this petition in the form prescribed by 49 C.F.R. § 1152.60(c) is attached hereto as Exhibit B.

MMT provides service on the Line pursuant to a Lease Agreement with BNSF, the Line’s owner. The Lease Agreement is due to terminate as of March 31, 2020, whereupon BNSF and MMT have agreed that, as of April 1, 2020, BNSF will assume direct operation of the Line in place of MMT. The proposed discontinuance will allow MMT formally to end its

common carrier obligations over the Line. No customer on the Line will be left without common carrier service as a consequence of MMT's proposed discontinuance of service, which will merely facilitate an agreed-upon change in rail service providers. Moreover, as discussed below, discontinuance plainly satisfies the exemption criteria of 49 U.S.C. § 10502(a), and, accordingly, this petition should be granted.

I. Identification of Petitioner

Petitioner MMT is a Class III common carrier by rail which operates approximately 35 miles of railroad on two non-contiguous line segments in Montana. *See Watco Companies, Inc. — Continuance in Control Exemption — Mission Mountain Railroad, Inc.* Docket No. FD 34635 (STB served Jan. 19, 2005).¹ MMT is a wholly-owned subsidiary of WATCO Companies, which controls numerous rail carrier subsidiaries operating in 25 states. None of WATCO's other rail carrier holdings connect with MMT.

The complete name and address of MMT is:

Mission Mountain Railroad, L.L.C.
315 W. 3rd St.
Pittsburg, Kansas 66762

II. Description of the Line that is the Subject of this Petition

The Line is a roughly 13.33-mile, single-track, stub-ended line extending from approximately milepost 1211.86 at the interchange with BNSF at Columbia Falls, Montana, to milepost 1225.19 at Kalispell, Montana.² The Line traverses United States Postal Service ZIP

¹ In 2010, Mission Mountain Railroad, Inc. became Mission Mountain Railroad, L.L.C.

² At the time MMT commenced its lease operations over the line segment running from Columbia Falls to Kalispell in 2005, the tracks extended to milepost 1227.58 at Kalispell. *Mission Mountain Railroad, Inc. — Acquisition Exemption — The Burlington Northern and Santa Fe Railway Company.* Docket No. FD 34634 (STB served Jan. 19, 2005). MMT

Codes 59901 and 59912. Although of dubious relevance in the present context where service will continue under another rail carrier and no abandonment is contemplated, MMT states that, based on information in its possession, it does not believe that the Line contains federally-granted rights-of-way. Any documentation in petitioner's possession regarding federally-granted rights-of-way will be made available promptly to those requesting it.

III. Jurisdiction and Statutory Standards

The Board has jurisdiction over the proposed discontinuance of the Line pursuant to 49 U.S.C. § 10903. Generally, a common carrier by rail such as MMT must obtain authority from the Board under § 10903 before discontinuing service over a line of railroad. However, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that: (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power.

A. An exemption would serve the Rail Transportation Policy

The Rail Transportation Policy requires the Board to minimize the need for federal regulatory control over the rail transportation system, reduce barriers to exit, and expedite

subsequently discontinued common carrier service over, and BNSF secured authority to abandon the portions of the line segment beyond milepost 1225.19. *Mission Mountain Railroad, L.L.C. – Discontinuance of Service Exemption – In Flathead County, Mont.*, Docket No. AB 1009 (Sub-No. 1X) (STB served Aug. 23, 2017); *BNSF Railway Company – Abandonment Exemption – In Flathead County, Mont.*, AB 6 (Sub-No. 495X) (STB served Aug. 14, 2017); *Mission Mountain Railroad, Inc. – Discontinuance of Service Exemption – In Flathead County, Mont.*, Docket No. AB 1009X (STB served May 21, 2007); and *BNSF Railway Company – Abandonment Exemption – in Flathead County, MT*, STB Docket No. AB-6 (Sub-No. 444X) (STB served Sep. 28, 2006).

regulatory decisions. 49 U.S.C. §§ 10101(2), (7), and (15). The Board has previously and repeatedly has recognized that exempting certain discontinuances of service from the formal application requirements of § 10903 serves these three elements of the RTP, thereby satisfying the exemption criterion of 49 U.S.C. § 10502(a)(1). *E.g., Savage, Bingham & Garfield Railroad Company — Discontinuance of Trackage Rights Exemption — In Whiting, Ind.*, Docket No. AB 1271X (STB served Mar. 1, 2019) at 2 (“An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15)”) (citation in original).

The requested discontinuance exemption would – (1) minimize the need for regulatory control over MMT’s operations of the Line in accordance with 49 U.S.C. § 10101(2); (2) eliminate a regulatory barrier to MMT’s exit consistent with 49 U.S.C. § 10101(7); and (3) expedite the regulatory processes to facilitate an agreed-upon transition from MMT operations back to those of BNSF – the Line’s operator prior to 2005. Granting MMT its requested exemption obviates the need for the expensive and time-consuming processes attendant to a formal application proceeding under § 10903, and thereby would be consistent with the mandate of Section 10502(a)(1) and the mandate’s incorporation of 49 U.S.C. § 10101.

B. The Transaction Is of Limited Scope

The transaction for which exemption is sought consists solely of the discontinuance of common carrier service by MMT over a stub-ended line segment approximately 13.33 miles in length owned by BNSF, and over which BNSF plans to resume common carrier service. During the term of MMT’s lease, MMT was the sole carrier on the Line, and reversion to BNSF operation will result in a different single carrier operation. Under these circumstances, the proposed discontinuance is clearly of limited scope.

C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse

Since this transaction is of limited scope, MMT need not demonstrate that regulation is necessary to protect shippers from market power abuse. 49 U.S.C. § 10502(a)(2). Even so, this transaction will not and cannot subject shippers to any market power abuse. The Line and the customers on it, have been served by a single carrier, and line-haul service has consistently been available through BNSF (first as the direct service provider, and then, later, with MMT serving as a handling line carrier for BNSF under the leasehold arrangement). Nevertheless, active shippers on the line will be served a copy of this petition as a courtesy.

V. Level of Labor Protection to be Imposed

The appropriate level of labor protection for the abandonment proposed herein is that set forth in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

VI. Environmental Impact Review, Interim Trails Use and Public Use Conditions

As a general rule, the Board does not require a carrier seeking to discontinue service over a rail line (as opposed to seeking to abandon it) to prepare and submit for review a combined environmental and historic report under 49 C.F.R. §§ 1105.6(c) and 1105.8(b).³ MMT submits that the Board’s general rule applies to this discontinuance proceeding, and so MMT has dispensed with the preparation of a combined environmental and historic report. MMT does not

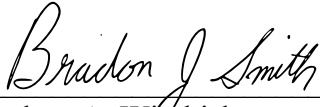
³ See, e.g., *Norfolk Southern Railway Company — Discontinuance of Service Exemption – in Isle of Wight, Southampton, Greensville, and Brunswick Counties, Va.*, Docket No. AB 290 (Sub-No. 359X) (STB served Dec. 16, 2013) at 2 (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required”); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS*, STB Docket No. AB 297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2 (same); *Chillicothe-Brunswick Rail Maintenance Authority–Discontinuance Exemption–in Livingston, Linn, and Chariton Counties, MO*, STB Docket No. AB 1001X (STB served Feb 23, 2007) at 2 n.3 (same).

intend to undertake salvage activity or to alter or destroy any historic structures that may exist along the line segment upon receipt of discontinuance authority, and has no legal authority to do so anyway, as a leasehold operator. Moreover, BNSF will resume operations over the Line as of April 1, 2020, so no rail line salvage will occur, and no rail-to-truck diversions would result to trigger potential air quality (emissions) impacts.

In addition, because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate.

WHEREFORE, MMT respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of the Line located in Flathead County, Montana, extending from approximately milepost 1211.86 at the interchange with the BNSF Railway at Columbia Falls, Montana, to milepost 1225.19 at Kalispell, Montana.

Respectfully submitted,

By: 
Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-2832
(312) 252-1500

**ATTORNEYS FOR MISSION MOUNTAIN
RAILROAD, L.L.C.**

Dated: April 1, 2020

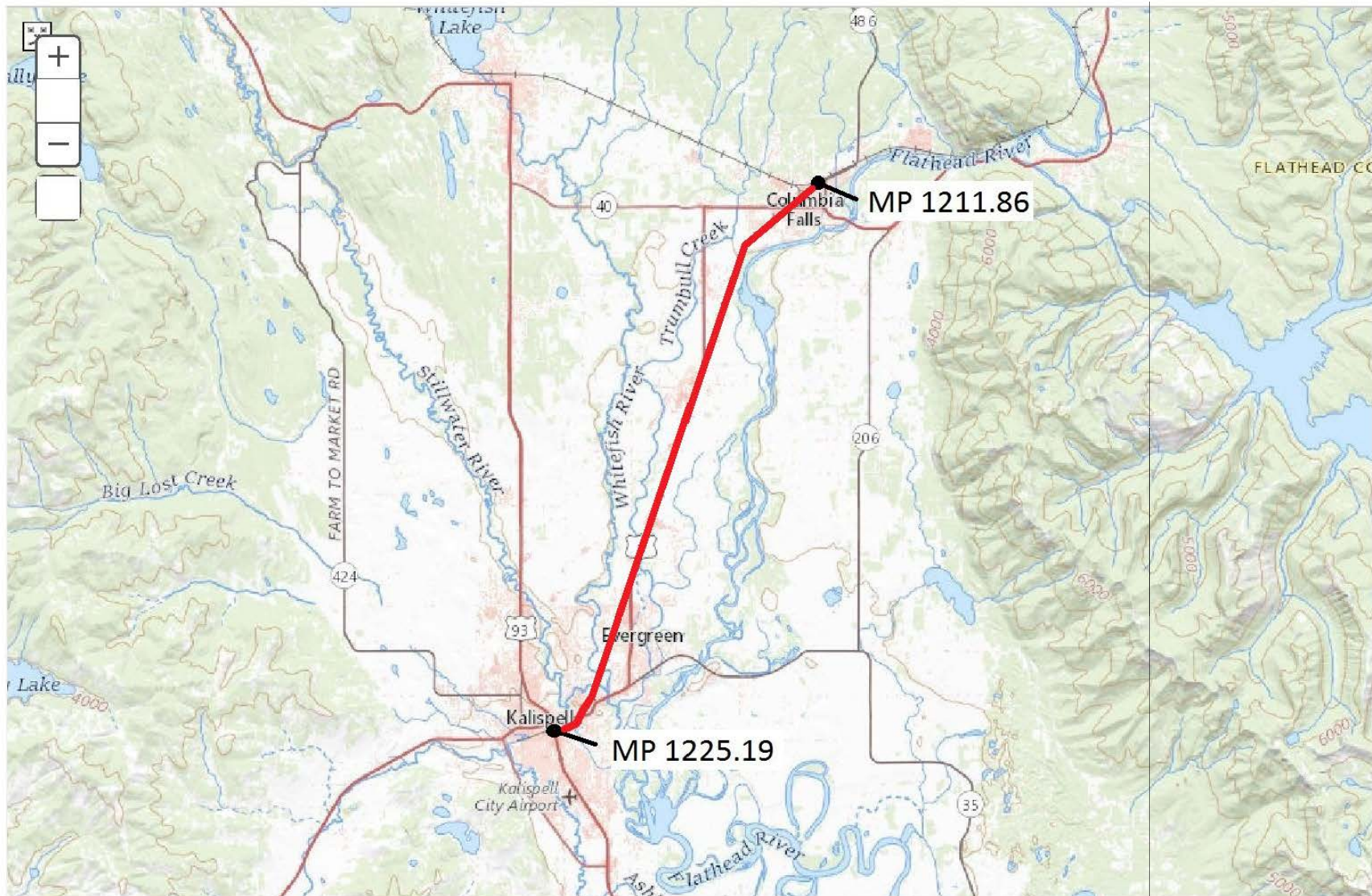
BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (SUB-NO. 2X)
MISSION MOUNTAIN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN FLATHEAD COUNTY, MONTANA

EXHIBIT A

MAP

Docket No. AB 1009 (Sub - No. 2X)
Mission Mountain Railroad, L.L.C. -
Discontinuance of Service Exemption
- In Flathead County, Mont.



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (SUB-NO. 2X)
MISSION MOUNTAIN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN FLATHEAD COUNTY, MONTANA

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-1009 (Sub-No. 2X)

Notice of Petition for Exemption To Discontinue Service

On April 1, 2020, Mission Mountain Railroad, L.L.C. (MMT) filed with the Surface Transportation Board 20423, a petition for exemption for the discontinuance of service on a line of railroad extending from milepost 1211.86 at the interchange with the BNSF Railway at Columbia Falls to milepost 1225.19 at Kalispell, a distance of approximately 13.33 route miles, located entirely in Flathead County, Montana. The Line traverses United States Postal Service Zip Codes 59901 and 59912. According to the petition, the Line is stub-ended and therefore not capable of handling overhead traffic.

To the best of MMT's knowledge as a leasehold operator, the Line (which is owned by BNSF Railway Company) does not contain federally granted rights-of-way. Any documentation in the railroad's possession regarding federally-granted rights-of-way, if any, will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad — Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

Because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b).

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations

at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

All filings in response to this notice must refer to Docket No. AB 1009 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-2832. Replies to the petition are due on or before _____, 2020.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2020.

By the Board, _____, Office of Proceedings.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (SUB-NO. 2X)
MISSION MOUNTAIN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN FLATHEAD COUNTY, MONTANA

EXHIBIT C

**CERTIFICATES OF SERVICE AND
PUBLICATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2020, in accordance with the requirements of 49 C.F.R. § 1152.60(d), a copy of the foregoing Petition for Exemption was served via electronic mail upon the following parties:

State of Montana Public Service
Commission
William Rosquist
Administrator— Regulatory Division
1701 Prospect Ave.
PO Box 202601
Helena, MT 59620-260
wrosquist@mt.gov

Ms. Ericka Pilcher
Program Manager
Recreation Resources Assistance Division
National Park Service
1849 C Street NW
Washington, DC 20240-0001
RTCA_Apps_IMR@nps.gov

Montana Department of Transportation
Lynn Zanto
Administrator — Rail, Transit and Planning
2701 Prospect Ave.
PO Box 201001
Helena, MT 59620-1001
lzanto@mt.gov

Ms. Vicki Christiansen
Chief, Forest Service
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250-1111
vcchristiansen@fs.fed.us

Military Surface Deployment & Distribution
Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-50067
Usarmy.scott.sddc.mbx.tea@mail.mil

In addition, I also hereby certify that on this date a copy of the foregoing Petition for Exemption was served by electronic mail upon the following users of rail service on the subject rail line and related stakeholders:

CHS
150 1st Ave.WN
Kalispell., MT 59901
mark.lalum@chsinc.com

Lyman Dust Control
PO Box 1460
Hayden, ID 83835
sales@lymandustcontrol.com

Forest Products Distribution
hammettrichard77@gmail.com

Northern Energy (Amerigas)
1120 E. Idaho
Kalispell, MT 59901
george.guth@amerigas.com

Glacier Stone
955 Whitefish Stage Rd.
Kalispell, MT 59901
jeri.brown@glacierstonesupply.com

Northwest Drywall
160 8th Ave. WN
Kalispell, MT 59901
pammowernwdw@msn.com

Klingler Lumber
250 Flathead Dr.
Kalispell, MT 59901
jhammett@montanasky.net

Pacific Steel & Recycling
105 Montclair Rd.
Kalispell, MT 59901
jack_stoken@pacific-steel.com

Lilenthal Insulation
22 West Reserve Dr.
Kalispell, MT 59901
mfopp@service-partners.com

Weyerhaeuser
PO Box 1990
Columbia Falls, MT 59912
Jenny.Krueger@weyerhaeuser.com

Builder's First Source
41 West Reserve Dr.
Kalispell, MT 59901
blake.maynard@bldr.com

Smartlam
610 3rd St. W
Columbia Falls, MT 59912
casey.malmquist@smartlam.com

Western Building Center
1550 9th St. West,
Columbia Falls, MT 59912
bhartley@westernbuildingcenter.com

Flathead County Economic
Development Authority
44 2nd Ave. West
Kalispell, MT 59901
Jerry@dobusinessinmontana.com

April 1, 2020



Bradon J. Smith
Attorney for Mission Mountain Railroad, L.L.C.

CERTIFICATE OF NEWSPAPER PUBLICATION

I certify that a “Notice of Petition to Discontinue Rail Service” was published in the form prescribed by the Surface Transportation Board for a petition for exemption (49 C.F.R. § 1105.12). The notice was published in the *Flathead Beacon* (April 1, 2020), a newspaper of general circulation in Flathead County, MT where the subject rail line is located.

April 1, 2020



Bradon J. Smith
Attorney for Mission Mountain Railroad, L.L.C.