

211645

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL

420
142
kmorell@dc.bjllp.com

July 23, 2004

BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street NW
Suite 715
Washington, DC 20423-001

FEE RECEIVED

JUL 23 2004

**SURFACE
TRANSPORTATION BOARD**



Re: STB Docket No. 307 (Sub-No. 5X), Wyoming and Colorado
Railroad Company, Inc. -- Abandonment Exemption -- In Carbon
County, Wyoming

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Petition for Exemption under 49 U.S.C. § 10502. Also attached is a check covering the \$4,700 filing fee.

Please time and date stamp the extra copy of the Petition and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

FILED

JUL 23 2004

**SURFACE
TRANSPORTATION BOARD**

Enclosures

ENTERED
Office of Proceedings

JUL 23 2004

Part of
Public Record

211645

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

PETITION FOR EXEMPTION



Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
Wyoming and Colorado Railroad
Company, Inc.

Dated: July 23, 2004

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

PETITION FOR EXEMPTION

Wyoming and Colorado Railroad Company, Inc. ("WYCO") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, WYCO's abandonment of a 23.71-mile rail line located in Carbon County, Wyoming.

PROPOSED TRANSACTION

WYCO proposes to abandon its rail line located between milepost 0.57, near Walcott, and milepost 24.28, at Saratoga, in Carbon County, Idaho (the "Line"). The Line traverses U.S. Postal Service Zip Codes 82331 and 82335. A map of the Line is attached as Exhibit A.

Based on information in WYCO's possession, the Line does not contain any federally granted right-of-way. Any documentation in WYCO's possession will be made available to those requesting it.

STATEMENT OF FACTS

WYCO acquired the Line, along with other rail lines, in November 1987 from the Union Pacific Railroad Company ("UP"). See Finance Docket No. 31140, *Wyoming and Colorado*

Railroad Company, Inc. – Acquisition and Operation Exemption – Certain Lines of Union Pacific Railroad Company (not printed), served November 30, 1987.

The only traffic that moved over the Line since it was acquired by WYCO has been lumber, wood chips and a one-time shipment of fluorspar. The last active rail shipper on the Line was Louisiana-Pacific Corporation (“LP”) which operated a mill in Saratoga. Since the mill was closed in January 2003, no traffic has moved over the Line.

Prior to closing the mill, LP shipped an average of about 75 cars per month. Since WYCO acquired the Line, LP’s traffic volumes have been inadequate fully to compensate the operation and continued maintenance of the Line. Therefore, LP agreed to enter into annual take-or-pay contracts that permitted WYCO to operate the Line on a marginally profitable basis.

WYCO began the abandonment process in June 2003 but suspended its efforts when it learned that another company may be interested in purchasing and reopening the mill. WYCO has had a number of discussions with the potential purchaser but has been unable to reach an arrangement that would enable WYCO to continue operating the Line on a profitable basis. WYCO has been informed that, if the mill is reopened, the traffic volumes would not justify retaining the Line and that the mill would instead use the nearby transload facilities operated by UP at Rawlins, WY. Consequently, WYCO is left with no option other than to abandon the Line.

EXEMPTION REQUESTED

WYCO seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for WYCO to abandon this 23.71-mile rail line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope; or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also Exemption From Regulation – Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, WYCO will be able to avoid the significant opportunity costs associated with retaining this dormant Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g., STB Docket No. AB-318* (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. WYCO will be able to rid itself of a line that has not seen traffic in 18 months and utilize the salvage funds to maintain the tracks on the remainder of WYCO’s system. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since there are no active shippers on the Line and no need for rail service along the Line.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the

traffic volume. *See, e.g.,* Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is clearly of limited scope. WYCO is seeking to abandon a 23.71-mile line that traverses a predominantly rural area where there has been no demand for rail service in 18 months. The shortness of the Line, the limited geographic area involved, and the lack of use all demonstrate the limited scope of the proposed abandonment. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

C. This Transaction Will Not Result In An Abuse of Market Power

There has been no freight traffic on the Line in 18 months. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on June 3, 2004. The Certificate of Service is attached as Exhibit C.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, WYCO respectfully urges the Board to grant the abandonment.

Respectfully submitted,



Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Dated: July 23, 2004

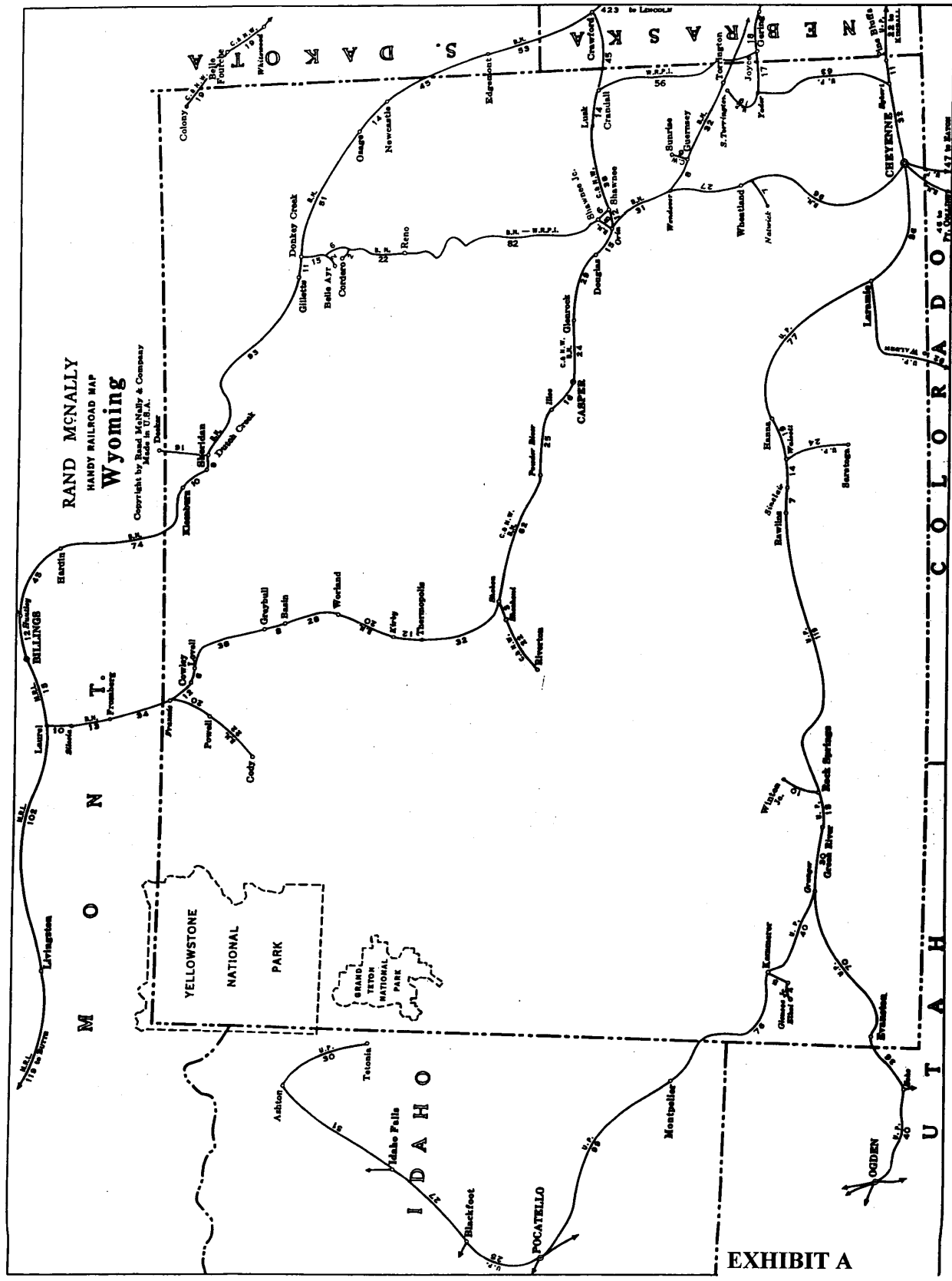


EXHIBIT A

EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

**WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING**

On July 23, 2004, Wyoming and Colorado Railroad Company, Inc. (WYCO) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for WYCO to abandon a line of railroad extending from railroad milepost 0.57, near Walcott, WY, to railroad milepost 24.28, in Saratoga, WY, which traverses U.S. Postal Service Zip Codes 82331 and 82335, a distance of 23.71 miles in Carbon County, Wyoming. There are no stations on the line for which abandonment exemption was filed.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by October __, 2004).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,100. *See* 49 C.F.R. 1002.2(f)(25).

All interested person should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$150 filing fee. *See* 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-307 (Sub-No. 5X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001, (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 565-1545 [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: _____ 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings,
Vernon A. Williams

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-307 (Sub-No. 5X) was mailed via first class mail on July 23, 2004, to the following parties:

State Public Service Commission Wyoming State Clearinghouse State Planning Coordinator's Office State Capital Building Room 124 Cheyenne, WY 82002 Wyoming Public Service Commission Hansen Building 2515 Warren Avenue Suite 300 Cheyenne, WY 82002 Military Traffic Management Command MTMCTEA ATTN: Railroads for National Defense 720 Thimble Shoals Blvd., Suite 130 Newport News, VA 23606-2574	National Park Service Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service National Park Service 12795 W. Alameda Parkway Denver, CO 80225-0287 U.S. Department of Agriculture U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Auditors' Building 14th St. and Independence Ave., S.W. Washington, DC 20250
--	---

Dated: July 23, 2004


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB-307 (Sub-No. 5X) was published on July 21, 2004, in the Saratoga Sun, a newspaper of general circulation in Carbon County, Wyoming as required by 49 C.F.R. § 1105.12.

Dated: July 23, 2004

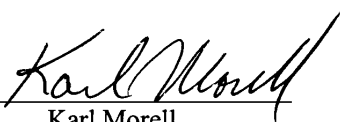

Karl Morell

**ENVIRONMENTAL REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in STB Docket No. AB-307 (Sub-No. 5X) was mailed via first class mail on June 3, 2004, to the following parties:

Wyoming State Clearinghouse State Planning Coordinator's Office State Capital Building, Room 124 Cheyenne, Wyoming 82002	Department of Environmental Quality Herschler Building 122 West 25 th Street Cheyenne, Wyoming 82002
Carbon County Commissioners P.O. Box 6 Rawlins, Wyoming 82310	U.S. Environmental Protection Agency Region 8 999 18 th Street, Suite 300 Denver, Colorado 80202-2466
State Conservationist USDA Natural Resources Conservation Service Federal Building 100 East B Street, Room 3124 Casper, Wyoming 82601	U.S. Army Engineer, Omaha District Wyoming Regulatory Office 2232 Dell Range Blvd., Suite 210 Cheyenne, Wyoming 82009-4942
U.S. Fish and Wildlife Service 4000 Airport Parkway Cheyenne, Wyoming 82001	The National Geodetic Survey Department of Commerce/NOAA SSMC3 Station 9356 1315 East West Highway Silver Spring, MD 20910
National Park Service Recreational Resources Assistance Division 1849 C Street, NW Washington, D.C. 20240-0001	

Dated: July 23, 2004


Karl Morell

**HISTORIC REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in STB Docket No. AB-307 (Sub-No. 5X) was mailed via first class mail on June 3, 2004, to the following party:

Wyoming State Historic Preservation Office
2301 Central Avenue
Barrett Building, 3rd Floor
Cheyenne, Wyoming 82002

Dated: July 23, 2004


Karl Morell