

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

211578



July 14, 2004

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

JUL 14 2004

Part of
Public Record

Re: *STB Docket No. AB-872X, Great Northwest Railroad, Inc.-Abandonment
Exemption—In Clearwater County, Idaho*

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 for \$4,700 to cover the filing fee.

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

If you have any questions, please call me.

Sincerely,

Karl Morell

FEE RECEIVED

JUL 14 2004

Enclosures

**SURFACE
TRANSPORTATION BOARD**

FILED

JUL 14 2004

**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

211578

DOCKET NO. AB-872X

GREAT NORTHWEST RAILROAD, INC.
--ABANDONMENT EXEMPTION--
IN CLEARWATER COUNTY, IDAHO



PETITION FOR EXEMPTION

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SURFACE
TRANSPORTATION BOARD

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

Attorney for:
Great Northwest Railroad, Inc.

Dated: July 14, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-872X

GREAT NORTHWEST RAILROAD, INC.
--ABANDONMENT EXEMPTION--
IN CLEARWATER COUNTY, IDAHO

PETITION FOR EXEMPTION



Great Northwest Railroad, Inc. ("GNR") 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, GNR's abandonment of a 27.5-mile rail line located in Clearwater County, Idaho.

PROPOSED TRANSACTION

GNR proposes to abandon the GNR rail line located between milepost 3.5 at Orofino and milepost 31.0, near Jaype, in Clearwater County, Idaho (the "Line").¹ The Line traverses U.S. Postal Service Zip Codes 83544 and 83546. A map of the Line is attached as Exhibit A.

¹ As explained in the Environmental and Historic Reports filed with the Board on June 8, 2004, GNR initially planned to also seek abandonment authority for the rail line located between mileposts 0.0 and 3.5 and, upon receiving abandonment authority, to convert that 3.5-mile segment into a spur. Upon further consultation with the shipper on that line segment, GNR has decided not to convert that segment into a spur and, therefore, has removed that segment from the scope of this abandonment request.

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

STATEMENT OF FACTS

In February 2004, GNR acquired substantially all of the assets of Camas Prairie RailNet, Inc. ("RailNet"), including the Line. *See* STB Finance Docket No. 34474, *Great Northwest Railroad, Inc. – Acquisition and Operation Exemption – Camas Prairie RailNet, Inc.* (not printed), served March 19, 2004. RailNet, in turn, had acquired the Line and a series of other interconnected rail lines owned by Union Pacific Railroad Company and The Burlington Northern And Santa Fe Railway Company and operated by Camas Prairie Railroad Company in 1998. *See* STB Finance Docket No. 33558, *Camas Prairie Railnet, Inc. – Acquisition and Operation Exemption – Camas Prairie Railroad Company, Union Pacific Railroad Company, and The Burlington Northern and Santa Fe Railway Company* (not printed), served April 30, 1998.

In its Notice of Exemption, GNR pointed out that no traffic had moved over the Line in well over two years and that a majority of the Line was out of service. GNR explained that it was acquiring the Line because, in February 2004, GNR was still in discussions with potential customers on the Line to see if adequate traffic volumes could be developed to justify the cost of reopening and operating the Line. GNR pointed out, however, that it would be forced to abandon the Line if its efforts were unsuccessful. Unfortunately, GNR was not able to obtain adequate traffic commitments to justify the significant expense of reopening the Line and, thus, is left with no option other than to seek an exemption authorizing the abandonment of the Line.

Within recent decades, the largest shipper on the Line was Potlatch Corporation (“Potlatch”). In the early 1980’s, Potlatch shipped approximately 20,000 carloads of logs and finished plywood annually over the Line. Potlatch’s annual carloads moving over the Line declined to approximately 8,000 by the early 1990’s and further declined to approximately 3,500 by the end of the 1990’s. Potlatch stopped utilizing the Line in June 2001. Since then, Potlatch has demolished the plywood mill near Jaype and shifted its log traffic originating along the Line to trucks.

Within the past 15 years, three other shippers made minimal use of the Line. Until about 10 to 15 years ago, Chevron shipped four to five carloads of diesel fuel annually over the Line to its facility at Nelson, near Jaype. Idaho Lime shipped a total of 5 to 10 carloads of lime from its facility on the Line prior to 1998. Atlas Sand and Gravel shipped approximately 10 carloads of magnesium chloride over the Line annually until 2001. No traffic has moved over the Line since June 2001. Consequently, the Line would qualify for the Board’s 2-year out of service exemption procedures if GNR had owned the Line for 2 years. *See Tulare Valley R. Co. – Aban. – Kings & Tulare Counties, CA 9 I.C.C.2d 1205 (1993).*

Pursuant to Idaho Code § 62-424, the Idaho Public Utilities Commission (“Commission”) held a public hearing on June 28, 2004 concerning the abandonment of the Line.² At the hearing, a few witnesses testified about potential industries that could locate along the Line if rail service were retained. The Board and its predecessor, however, have consistently held that mere

² Section 62-424 requires the Commission to schedule a hearing on abandonments to be filed before the Board. The purpose of the hearings is to determine whether the proposed abandonment would: (1) adversely affect the area being served; (2) impair the access of Idaho shippers to vital goods and markets; and (3) whether the rail line has the potential for profitability. If the Commission finds that the abandonment would adversely affect the area being served and the line has the potential for profitability, then the Commission may represent the State of Idaho in the proceeding before the Board.

speculation about future traffic is not a sound basis to deny an abandonment exemption. *See e.g.*, STB Docket No. AB-6 (Sub-No. 370X), *Burlington Northern Railroad Company – Abandonment Exemption – Between Mesa and Basin City, Franklin County, WA* (not printed), served January 27, 1997; Docket No. AB-55 (Sub-No. 413X), *CSX Transportation, Inc. – Abandonment Exemption – in Webster County* (not printed), served May 29, 1992.

GNR acquired the Line knowing that it had been out of service for nearly three years. Before and after the acquisition, GNR worked diligently to develop adequate business on the Line to justify its reopening. Based on discussions with potential customers, GNR came to the conclusion that the Line is not economically viable now and has no potential of being profitably operated in the foreseeable future. The testimony at the Commission's hearing has only reinforced GNR's conclusion. While Idaho Lime claimed that it could ship up to 500 carloads a year, it admitted to not having shipped a single carload since 1998. The other references to potential traffic were not with respect to potential rail customers already located along the Line but industries that could locate on the Line in the future. The identified industries, however, could just as easily locate on GNR's nearby active rail lines.

EXEMPTION REQUESTED

GNR seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for GNR to abandon this 27.5-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, GNR 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. GNR will be able to rid itself of a line that has not seen traffic in years and utilize the salvage funds to maintain the tracks on the remainder of GNR’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. GNR is seeking to abandon a 27.5-mile line that traverses a predominantly rural area where there has been no demand for rail service in recent years. 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 recent years. 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 8, 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, GNR respectfully urges the Board to grant the abandonment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", is written over a horizontal line.

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

Dated: July 14, 2004

EXHIBIT A

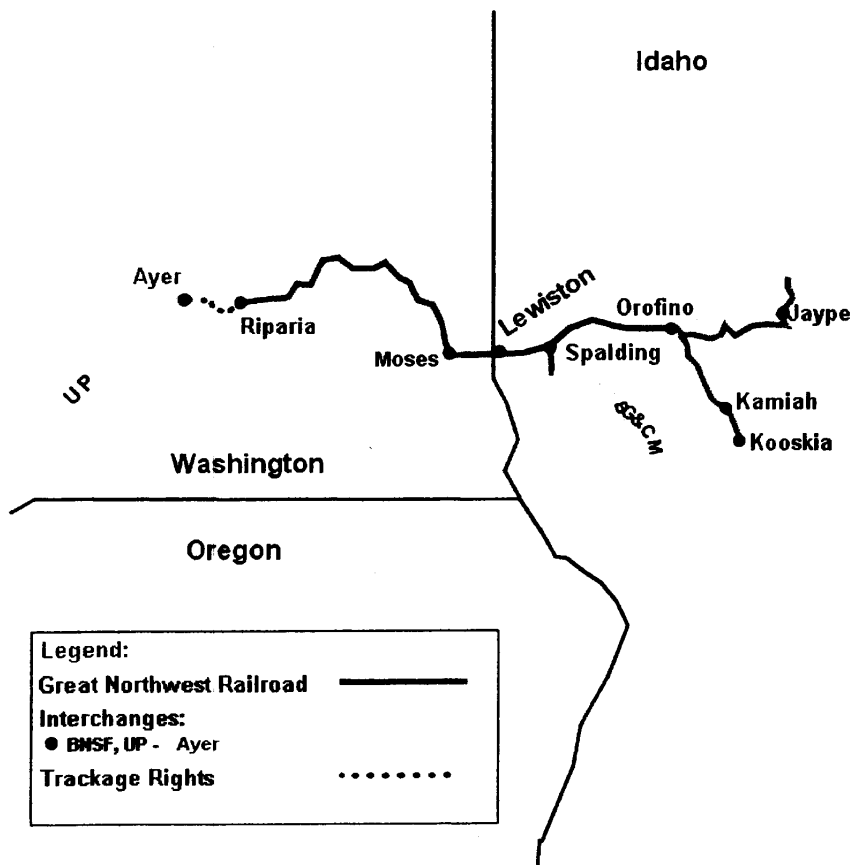


EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-872X

**GREAT NORTHWEST RAILROAD, INC.
--ABANDONMENT EXEMPTION--
IN CLEARWATER COUNTY, IDAHO**

On July 14, 2004, Great Northwest Railroad, Inc. (GNR) 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 GNR to abandon a line of railroad extending from railroad milepost 3.5, at Orofino, ID, to railroad milepost 31.0, at Jaype, ID, which traverses U.S. Postal Service Zip Codes 83544 and 83546, a distance of 27.5 miles in Clearwater County, Idaho. 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-872X 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 Docket No. AB-872X was mailed via first class mail on July 14, 2004, to the following parties:

State Public Service Commission Commission Secretary Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, ID 83720-0074	National Park Service Mr. Tom Ross 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
Military Traffic Management Command MTMC TEA ATTN: Railroads for National Defense 720 Thimble Shoals Blvd., Suite 130 Newport News, VA 23606-2574	National Park Service U.S. Department of Interior National Park Service Land Resources Division 800 N. Capitol Street, N.E. Washington, DC 20002 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 14, 2004


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB-872X was published on July 8, 2004, in the Clearwater Tribune, a newspaper of general circulation in Clearwater County, Idaho as required by 49 C.F.R. § 1105.12.

Dated: July 14, 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-872X was mailed via first class mail on June 8, 2004, to the following parties:

Idaho Public Utilities Commission P.O. Box 83720 Boise, Idaho 83720-0072	Department of Environmental Quality 1410 North Hilton Boise, Idaho 83706-1255
Clearwater County Board of Commissioners P.O. Box 586 Orofino, Idaho 83544	U.S. Environmental Protection Agency Region 10 1200 Sixth Avenue Seattle, WA 98101
State Conservationist USDA Natural Resources Conservation Service 9173 W. Barnes Dr., Suite C Boise, ID 83709	U.S. Army Engineer District, Walla Walla 201 North 3 rd Avenue Walla Walla, WA 99362
U.S. Fish and Wildlife Service 911 NE 11 th Avenue Portland, OR 97232-4181	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 14, 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-872X was mailed via first class mail on June 8, 2004, to the following party:

Idaho Historical Society
210 Main Street
Boise, ID 83702

Dated: July 14, 2004


Karl Morell