



SIERRA RAILROAD COMPANY

341 Industrial Way
Woodland, CA 95776-6012
Tel: 530-666-9646
Fax: 530-666-2919

210287

March 11, 2004

Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



Re: Notice of Exemption, Mendocino Railway, FD 34465

Dear Sir or Madam:

The following is enclosed:

1. An original and 10 copies of the Notice of Exemption by Mendocino Railway;
2. A 3.5 inch floppy disk containing the Notice of Exemption in WordPerfect 5.1 format.
3. A check in the amount of \$1,400.00 for the filing fee.

Please contact me if there are any questions regarding the above matters.

Sincerely,

David Magaw
Vice President, Sierra Railroad Company
President, Mendocino Railway

ENTERED
Office of Proceedings
MAR 12, 2004
Part of
Public Record

FEE RECEIVED

MAR 12 2004

SURFACE
TRANSPORTATION BOARD

FILED
MAR 12 2004
SURFACE
TRANSPORTATION BOARD

210287

BEFORE THE SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. FD 34465



VERIFIED NOTICE BY MENDOCINO RAILWAY FOR EXEMPTION UNDER 49 C.F.R. § 1150.31 OF
ACQUISITION OF THE ASSETS OF THE CALIFORNIA WESTERN RAILROAD

FEE RECEIVED

MAR 12 2004

**SURFACE
TRANSPORTATION BOARD**

Torgny Nilsson, General Counsel
Mendocino Railway
341 Industrial Way
Woodland, California 95776
(530) 666-9646

FILED

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TRANSPORTATION BOARD**

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Office of Proceedings**

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BEFORE THE SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

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VERIFIED NOTICE BY MENDOCINO RAILWAY FOR EXEMPTION UNDER 49 C.F.R. § 1150.31 OF
ACQUISITION OF THE ASSETS OF THE CALIFORNIA WESTERN RAILROAD

1. Introduction

This verified notice is filed pursuant to 49 C.F.R. section 1150.31 by Mendocino Railway, a non-carrier, to exempt from regulation under 49 U.S.C. section 10901, its acquisition of the assets of the California Western Railroad (the "CWR") from the CWR through its trustee in bankruptcy and with the approval of the Bankruptcy Court for the Northern District of California. Mendocino Railway's acquisition of the CWR will hereinafter be referred to as the "Acquisition." Mendocino Railway intends to at least initially operate the CWR with the help of its affiliated entities: Sierra Northern Railway (a Class III common carrier); Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company); and Sierra Entertainment (a tourism, entertainment, and passenger operations company). The CWR is located in Mendocino County, California. The total mileage to be acquired is approximately forty (40) miles.

Mendocino Railway is a California corporation formed for the purpose of acquiring and operating the CWR. Mendocino Railway's status as a wholly-owned subsidiary of Sierra Railroad Company (a non-carrier holding company), and its relationships with its affiliated entities give Mendocino Railway access to the experienced personnel, equipment, and economies of scale needed to conduct the repairs and maintenance required if the CWR is to reopen in time for the May 1, 2004 beginning of the tourist season in Mendocino County. Reopening by this deadline is crucial as the CWR has—at least recently—relied almost solely on tourism to support its continued operation.

2. Information

In accordance with 49 C.F.R. section 1150.33, Mendocino Railway hereby states as follows:

a. Full Name And Address Of Applicant

Mendocino Railway
341 Industrial Way
Woodland, California 95776

b. Representative Of Applicant To Receive Correspondence

Torgny Nilsson, General Counsel
Mendocino Railway
341 Industrial Way
Woodland, California 95776
(530) 666-9646

c. Statement Of Agreement Reached

Judge Alan Jaroslovsky of the Bankruptcy Court for the Northern District of California has issued a February 11, 2004 Order Authorizing Sale of Railroad Assets that authorized the Trustee to sell the railroad assets of the CWR to Sierra Railroad Company. Sierra Railroad Company has formed Mendocino Railway as a wholly owned subsidiary to acquire and operate the CWR. A true and correct copy of the court's Order is attached as Exhibit "A" hereto.

Mendocino Railway is in the process of attempting to reach an agreement with Hawthorne Timber Company, LLC ("Hawthorne") for the transfer to Mendocino Railway of Hawthorne's fee interest in the real property underlying the CWR's tracks, but no such agreement has yet been reached.

d. The Operator Of The Property

Mendocino Railway will operate the CWR, at least initially with the help of its affiliated entities: Sierra Northern Railway (a Class III common carrier); Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company); and Sierra Entertainment (a tourism, entertainment, and passenger operations company).

e. Summary Of Proposed Transaction

i. Name, Address, And Telephone Number Of Railroad Transferring Property

The railroad transferring the property is the CWR, through its bankruptcy trustee, Michael H. Meyer, 3510 Unical Place, Suite 108, Santa Rosa, California 95403; (707) 544-5500, and with the approval of Judge Alan Jaroslovsky of the Bankruptcy Court for the Northern District of California, 99 South "E" Street, Santa Rosa, California 95404; (707) 525-8520.

ii. Proposed Time Schedule

Following open bidding and a bankruptcy court hearing on December 16, 2003 that involved testimony by, and questioning of, representatives of all parties bidding to acquire the CWR, Judge Jaroslovsky on December 17, 2003 issued a Memorandum on Confirmation of Plan or Sale of Assets selecting SRC as the successful bidder for the CWR's assets. A true and correct copy of Judge Jaroslovsky's Memorandum on Confirmation of Plan or Sale of Assets is attached as Exhibit "B" hereto and incorporated by reference herein.

SRC subsequently incorporated Mendocino Railway to implement the Acquisition. Mendocino Railway, the bankruptcy trustee, and Hawthorne have worked diligently to promptly finalize the Acquisition. Mendocino Railway and SRC have conducted extensive inspections of the CWR's equipment and tracks and formulated repair and maintenance plans so that the CWR can reopen on or about May 1, 2004. Mendocino Railway and SRC have also commenced maintenance and repair of the CWR's tracks and equipment.

Provided that there are no delays to the conclusion of this notice process, Mendocino Railway anticipates completing its Acquisition by the middle of March 2004 and reopening the CWR on or about May 1, 2004.

iii. Mile Posts Of Subject Property

The subject property consists of all rail lines owned by the CWR, described as between milepost 0 and milepost 40.

iv. Total Route Miles Being Acquired

Approximately 40 route miles are being acquired.

f. Map Indicating Area To Be Served

A map indicating the area to be served is attached as Exhibit "C" hereto and incorporated by reference herein.

g. Certificate That Applicant's Projected Revenues Do Not Exceed Those That Would Qualify It As a Class III Carrier

Mendocino Railway certifies that its projected revenues do not exceed \$5 million per year and do not exceed those that would qualify it as a Class III carrier.

3. Environmental Report

Pursuant to 29 C.F.R. section 1105.6(c)(2), no environmental documentation is required because this proceeding involves authority for an acquisition under 49 U.S.C. section 10901 that will not result in significant changes in operations of the CWR or operations exceeding the thresholds established in 49 C.F.R. section 1105.7(e)(4) or (5).

4. Historic Report

No historic report under 49 C.F.R. section 1105.8(b)(1) is required because the acquisition merely involves the acquisition for continued rail operations and further Board approval is required to discontinue or abandon any service. Mendocino Railway has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

5. Labor Protection

Mendocino Railway does not believe that its Acquisition is subject to labor protection conditions. However, Mendocino Railway's Acquisition will not result in any layoffs or other reductions of personnel: the CWR shut down for the winter in or about September 2003 and has not employed more than one person since that time. Mendocino Railway anticipates that the Acquisition will result in the hiring of, not the reduction of, personnel.

6. Caption Summary

The caption summary required by 49 C.F.R. section 1150.34 is attached as Exhibit "D" hereto.

Respectfully Submitted,



Torgny Nilsson
General Counsel
Mendocino Railway
341 Industrial Way
Woodland, California 95776
(530) 666-9646

VERIFICATION

I, Davis Magaw, the incorporator of Mendocino Railway, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed this 11th day of March 2004.



David Magaw

EXHIBIT A

1 STATE BAR NO. 60780
2 DAVID N. CHANDLER
3 David N. Chandler, p.c.
4 1747 Fourth Street
5 Santa Rosa, CA 95404
6 (707) 528-4331
7 Attorney for Trustee

FILED
February 11, 2004
U.S. Bankruptcy Court
Santa Rosa, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

8
9 IN RE:) CASE No. 02-12924
10 CALIFORNIA WESTERN) CHAPTER 11
11 RAILROAD, INC.,)
12 Debtor.) ORDER AUTHORIZING SALE
13 OF RAILROAD ASSETS

FEB 13 2004

14 The above captioned matter having regularly come on for hearing
15 on the Motions of Michael H. Meyer, Trustee, for an Order Determining
16 Secured Status, for Order Authorizing Sale Free and Clear of Liens
17 and for Confirmation of a Plan on December 16, 2003, David N.
18 Chandler appearing for Michael H. Meyer, Trustee, Timothy Hoffman
19 appearing for John and Sandra Mayfield, et al., Don Poole appearing
20 for WestAmerica Bank, Douglas Provencher appearing for Economic
21 Development Corporation, and appearances having been made on behalf
22 of bidders for the assets of the California Western Railroad,
23 evidence having been presented, the cause argued and submitted, and
24 the Court having filed its Memorandum on December 17, 2003, and good
25 cause appearing,

26 IT IS HEREBY ORDERED as follows:

27 1. The Trustee is authorized to sell the railroad assets
28 described in the Motion and the First Amended Plan to Sierra Railroad
29 Company for \$1,400,000.

30 2. Title to said property shall be delivered free and clear of
31 liens as agreed and consented in open Court and pursuant to further
32 Order of the Court. Said liens shall attach to the proceeds of sale
33 to the following extent:

34 John Mayfield, et. al. \$300,000.00

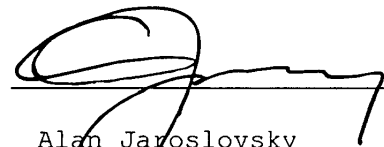
35 WestAmerica Bank 700,000.00

36 3. Sierra Railroad Company shall promptly seek, at its expense,

1 Surface Transportation Board approval to acquire the railroad assets
2 of the Debtor.

3 4. Said sale may be made and consummated in conjunction with
4 the confirmation of the Second Amended Plan, the effective date of
5 which is the date of consummation of the said sale.

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7 Dated: February 11, 2004

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11 
12 Alan Jaroslovsky
13 U.S. Bankruptcy Judge

14 CERTIFICATE OF ELECTRONIC SERVICE

15 The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of
16 California hereby certifies that a copy of the attached document was electronically served on this date
17 on all parties listed below in accordance with the Federal Rules of Bankruptcy Procedure, and Rule
18 5(b)(2)(D) of the Federal Rules of Civil Procedure.

19 Dated: Feb 11, 2004

20 

21 Dawn Passalacqua
22 Deputy Court Clerk

23 Michel Meyer
24 mmeyer@sr13.com

25 David Chandler
26 dchandler1747@yahoo.com

27 Philip Arnot
28 ArnotInc@aol.com

29 Terrance Ponsford
30 tponsford@smrh.com

31 Tim Hoffman
32 THOFFMA@abbeylaw.com

33 Douglas Provencher
34 dbp@PROVLAW.com

35 John MacConaghy
36 dyork@pacbell.net

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dawn Passalacqua

Dated: Feb 11, 2004

Dawn Passalacqua
Deputy Court Clerk

Ross Walker
111 E Commercial St.
Willits, CA 95490

Michael Gogna
401 Mendocino Ave.
Santa Rosa, CA 95401

Torgny Nilsson
341 Industrial Way
Woodland, CA 95776

Hanno T. Powell
Law Offices of Hanno T. Powell
1640 W Shaw Ave. #101
Fresno, CA 93711

Law Offices
of

David N. Chandler, p.c.
1747 Fourth Street
Santa Rosa, CA 95404
(707) 528-4331

EXHIBIT B

FILED
December 17, 2003
U.S. Bankruptcy
Court
Santa Rosa, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

CALIFORNIA WESTERN RAILROAD, INC.,

No. 02-12924

Debtor.

Memorandum on Confirmation of Plan or Sale of Assets

Introduction

Debtor California Western Railroad filed a petition under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code on December 3, 2002. Michael Meyer is the trustee appointed pursuant to § 1163 of the Code. His plan of reorganization proposed under § 1172 of the Bankruptcy Code is now before the court. The plan calls for the sale of all of the assets, which is the only way the railroad can survive, as Meyer is unable to continue to operate the railroad. In the event that all of the requirements of confirmation cannot be met, Meyer seeks leave to sell the railroad pursuant to § 363(b) of the Code.

Background

California Western Railroad operates on approximately 48 miles of track between Ft. Bragg and Willits, California. It was originally built as a logging railroad, but has also provided significant passenger service since 1912. It remains a vital link between Willits and the coastal communities.

At Willits, California Western owns a depot which is located on the Northwestern Pacific (NWPY) track, on which California Western has trackage rights. California Western connects to the

196

1 NWPY track, which connects to the Union Pacific Railroad mainline. However, the NWPY line has
2 been closed recently due to maintenance issues, which has resulted in at least a temporary stop to freight
3 traffic. As a result, it has operated in recent years primarily as an excursion railroad. Though there is no
4 longer direct connection to the rest of the country through the NWPY track, Amtrak allows California
5 Western to have access to the Union Pacific Mainline.

6
7 **Procedural Status**

8 There is no question that the railroad must be sold now in order to survive. There is also no
9 question that the value of the railroad is insufficient to result in any dividend to the general unsecured
10 creditors, although the plan is still confirmable because, as required by § 1129(b)(2)(B) of the Code, no
11 junior class is to receive anything. Both § 1165 and § 1173(a)(4) require the court to consider the
12 public interest in making its decision.

13 The Trustee's plan calls for the court to select a buyer from among five potential purchasers,
14 considering their bids and business plans. Two of the potential purchasers have dropped out, leaving
15 bids by Pacific Cascade Railway, LLC ("Pacific Cascade"), Sierra Railroad Company ("Sierra"), and
16 Old 45, LLC ("Old 45"). The highest bid is that of Pacific Cascade, at \$1.5 million. The other two
17 bidders have offered \$1.4 million each.¹ Although none of the bidders have standing to argue which
18 should be selected, the court permitted them to present their proposals and allowed limited examination
19 of each others' representatives.² The court also allowed counsel for the affected communities to
20 participate.

21
22 _____
23 ¹Sierra Railroad had originally bid only \$1 million. Upon understanding that a plan simply
24 would not work at that number, Sierra expressed a willingness to increase its bid to \$1.4 million. Upon
25 request of the Trustee, the court agreed to consider the sale to Sierra at its increased bid.

26 ²Pacific Cascade claimed standing to proceed as a creditor by virtue of having purchased a small
unsecured claim. However, standing based on this claim evaporated when it became clear that under no
circumstances would there be a dividend to unsecured creditors, who therefore had no economic interest
in the case.

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2 Selection of Purchaser

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I. Old 45

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The least attractive purchaser, by far, is Old 45. Its business plan completely lacks vision and hope. Under its ownership, the railroad would abandon any idea of ever again fulfilling its intended role as an important economic asset for the area it serves and instead become a plaything for adults who had outgrown their model railroad toys. While the historical aspect of the railroad is important and worth preserving, Congress did not enact the special railroad provisions of the Bankruptcy Code in order to create amusement rides. The court is not ready to reduce a valuable, working railroad to the status of a living museum.

Moreover, the principals proposed by Old 45 to operate the railroad are, for the most part, seriously lacking in both railroad experience and business acumen. If their limited use of the railroad did not result in a profit, or if they grew tired of it, they would not have the ability to modify their strategy or create new sources of revenue. The Old 45 proposal is the one most likely to result in the demise of the railroad. The court would be very reluctant to approve a sale to Old 45 even if it was the only bidder.

II. Pacific Cascade

The proposal of Pacific Cascade is in many ways the opposite of the Old 45 proposal. While Pacific Cascade would continue passenger service, its plan foresees a potential heavy industrial use for the railroad in conjunction with development of deep-water docking services.³

³A similar proposal was made for the Eureka Southern Railway in 1992. At the urging of the local communities, the court chose a sale to a state-funded entity instead. The local communities probably regret their position in light of the failure of the purchaser to keep the railroad open. The court certainly regrets its decision.

1 Pacific Cascade's proposal has several attractive aspects. Its bid is \$100,000.00 higher than the
2 other two, which is worthy of consideration although not crucial.⁴ In addition, it properly recognizes the
3 value of the railroad as a still-viable tool for economic development and commerce. However, Pacific
4 Cascade does not have the backing of the local communities, who fear that Pacific Cascade's intended
5 use may be too industrial for the area and that failure of Pacific Cascade to realize its more ambitious
6 goals could result in the end of the railroad. This unease has been fostered by Pacific Cascade's failure
7 to successfully court the local communities and its apparent lack of candor in presenting its case to them.

8 9 III. Sierra

10 The Sierra proposal seems to strike a good balance between the theme park approach of Old 45
11 and the industrial development approach of Pacific Cascade. It recognizes that the railroad is still a
12 valuable instrument of commerce and that a combination of shipping and excursion service is the best
13 way to return the railroad to profitability and keep it operating. It also recognizes the historic place of
14 the railroad in its community and its value to the local tourism industry.

15 The court is impressed by Sierra's railroad resume, which is far more impressive than that of
16 either Old 45 or Pacific Cascade. It has operated railroads since 1897. It is currently operating several
17 railroads, some of which operate excursion trains and some which handle heavy freight operations. It
18 has demonstrated that its ability to use track maintenance personnel and equipment on many different
19 lines will result in an economy of scale which could be the difference between survival and demise for
20 this railroad.

21 Moreover, Sierra has a vision for the future utterly lacking from Old 45, and it is a vision
22 which, unlike Pacific Cascade's, is shared by the local communities. In all important respects, Sierra is
23 the best purchaser for this railroad.

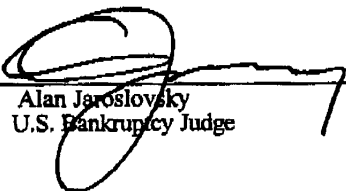
24
25 ⁴The benefit of the higher offer is offset by a secured creditor's consent to confirmation only if
26 the purchaser is other than Pacific Cascade. The economic effect of dealing with the rights of this
creditor probably makes the choice a push as far as creditors are concerned.

1 Conclusion

2 Sierra Railroad Company will be confirmed as the purchaser of the California Western Railroad,
3 at a price of \$1.4 million. At present, the Trustee has demonstrated all of the elements necessary for
4 confirmation of his plan except that the purchase price is insufficient to pay all of the priority claims as
5 required by § 1173(a) and § 1129(a)(9) of the Bankruptcy Code in the absence of their agreement to
6 other treatment.⁵ Accordingly, his plan will be confirmed if he obtains the required consents of the
7 priority creditors. If he cannot obtain the consents, the sale will be approved as a sale under § 363(b) of
8 the Code, with the treatment of secured creditors in the same manner as they have consented to treatment
9 under the plan.

10 This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and
11 FRBP 7052. Counsel for the Trustee shall submit an appropriate form of order forthwith.

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13 Dated: December 17, 2003

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16 
17 Alan Jaroslovsky
18 U.S. Bankruptcy Judge
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25 ⁵Their agreement would seem to make sound economic sense since all other alternatives,
26 including liquidation in Chapter 7, would result in smaller dividends to them. Once the railroad is sold,
the debtor will be eligible for Chapter 7. *In re Eureka Southern R. Co., Inc.*, 177 B.R. 323 Bankr.
(Bankr.N.D.Cal. 1995).

EXHIBIT C

MAP TO BE
SCANNED
LATER

EXHIBIT D

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 34465

MENDOCINO RAILWAY

– ACQUISITION –

CALIFORNIA WESTERN RAILROAD

Mendocino Railway has filed a notice of exemption to acquire the assets of the California Western Railroad, including its line between milepost 0 and milepost 40. Comments must be filed with the Board and served on Torgny Nilsson, General Counsel, Mendocino Railway, 341 Industrial Way, Woodland, California 95776; (530) 666-9646.

This notice is filed under 49 C.F.R. section 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.