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SERVICE DATE – LATE RELEASE JUNE 16, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35926

SAN JOAQUIN VALLEY RAILROAD CO.—AMENDED LEASE AND OPERATION  
EXEMPTION—SUNSET RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:<sup>1</sup> This decision allows San Joaquin Valley Railroad Co., a Class III rail carrier, to continue to lease from Sunset Railway Co. and operate approximately 19.75 miles of rail line in California without giving employees notice of the transaction because no employees would be adversely affected.

Decided: June 16, 2015

On May 18, 2015, San Joaquin Valley Railroad Co. (SJVR), a Class III rail carrier, filed a request for a waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e). The waiver request is related to a verified notice of exemption concurrently filed by SJVR in this docket under 49 C.F.R. § 1150.41 to continue to lease and operate a rail line in California. In that verified notice, SJVR certified that its projected annual revenues as a result of this transaction would exceed \$5 million. Accordingly, unless waived, § 1150.42(e) requires SJVR, at least 60 days before the notice of exemption can become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. No opposition to this waiver request has been filed.

BACKGROUND

SJVR filed its verified notice of exemption<sup>2</sup> to continue to lease from Sunset Railway Co. (Sunset) and operate approximately 19.75 miles of rail line between milepost 0.05 at Gosford, Cal., and milepost 19.8 at Levee, Cal. (the Leased Line). In 1997, SJVR entered into a lease

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Notice of the exemption was served and published in the Federal Register on June 3, 2015 (80 Fed. Reg. 31,642). But for the labor notice requirements, the exemption would become effective 30 days from its filing date, June 17, 2015.

agreement (Original Lease) with Sunset under which SJVR leased the line between milepost 0.05 at Gosford and milepost 36.3 at Taft, Cal.<sup>3</sup> The portion of the line between the current endpoint in Levee at milepost 19.8 (previously reported as milepost 20.0) and milepost 36.3 was abandoned by Sunset and operations over it were discontinued by SJVR.<sup>4</sup> The verified notice of exemption was filed because SJVR and Sunset recently entered into an amendment to the Original Lease that would extend its term to December 21, 2019, and would make other changes to the Original Lease.<sup>5</sup>

Because SJVR has been leasing and operating the Leased Line and would continue to do so, SJVR requests a waiver so that the authority it seeks in its exemption notice can become effective without SJVR's providing the otherwise-required labor notice. In support, SJVR asserts that: (1) there will be no changes for SJVR employees working on the Leased Line because SJVR has been the sole common carrier operator since 1997; and (2) no employees of Sunset have worked on the Leased Line since before 1997.

#### DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. SJVR employees would continue to provide the same service they have since 1997, and Sunset employees have performed no work on the Leased Line since 1997. Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, thereby allowing the related exemption authority to lease and operate the Leased Line to become effective on June 17, 2015.

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<sup>3</sup> SJVR was granted authority to lease and operate the rail line in San Joaquin Valley R.R.—Acquisition & Operation Exemption—Sunset Railway, FD 33404 (STB served June 18, 1997) (mileposts corrected by decision served on June 27, 1997).

<sup>4</sup> See Sunset Ry.—Aban. Exemption—in Kern Cnty., Cal., AB 170 (Sub-No. 1X) (STB served Dec. 21, 2004); San Joaquin Valley R.R.—Discontinuance Exemption—in Kern Cnty., Cal., AB 398 (Sub-No. 9X) (STB served Dec. 21, 2004).

<sup>5</sup> This amended lease agreement provides for the lease to renew automatically for five successive five-year terms unless either party delivers written notice of its desire not to renew the lease.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SJVR's request for waiver is granted, and the exemption authority to lease and operate the Leased Line will be effective on June 17, 2015.

2. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.