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SERVICE DATE – OCTOBER 14, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35303]

David Gavrich.—Continuance in Control Exemption—San Francisco Bay Railroad-Mare Island

David Gavrich (Gavrich) has filed a verified notice of exemption to continue in control of San Francisco Bay Railroad-Mare Island (SF Bay-Mare Is.), upon SF Bay-Mare Is.'s becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption for SF Bay-Mare Is. to operate about 8 miles of unmarked rail line owned by the City of Vallejo (the City) and Lennar Mare Island, LLC in Vallejo, CA. See San Francisco Bay Railroad-Mare Island—Operation Exemption—California Northern Railroad, STB Finance Docket No. 35304.

SF Bay-Mare Is. is currently negotiating an operating agreement with the City. Gavrich states that it intends to commence operations over the line as soon as the agreement has been finalized, a locomotive obtained and operating authority is granted.

In addition to wholly owning SF Bay-Mare Is., Gavrich is also the sole owner of San Francisco Bay Railroad (SF Bay).<sup>1</sup> SF Bay operates approximately 4.3 miles of track owned by the Port of San Francisco.

Gavrich states that the proposed transaction will restore common carrier freight service to Mare Island at the request of the City to meet the demand of a shipper. Further, the operation will increase employment opportunities in the region, as Mare Island has significant industry and commercial space with potential for increased commercial activity. Gavrich also states that his experience operating safely on city streets will reduce the cost of providing service.

Gavrich represents that the rail line to be operated by SF Bay-Mare Is. does not connect with track operated by SF Bay; the two railroads will serve shippers on opposite sides of San Francisco and San Pablo Bays. No Class I carrier is involved in the transaction. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because the carrier involved is a Class III carrier and the entity seeking to become a carrier would be a Class III carrier.

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<sup>1</sup> SF Bay was originally formed as LB Railco, Inc. on January 8, 2001; the  
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If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 21, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35303, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John F. McHugh, 6 Water St., New York, NY 10004.

Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: October 8, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary

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( . . . continued)  
railroad’s name was changed in 2007.