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SERVICE DATE - MARCH 15, 2002

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34171]

Butte-Silver Bow County–Acquisition Exemption–Silver Bow County, MT

Butte-Silver Bow County (BSB, or the County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31¹ to acquire an 11-mile rail line known as the Missoula Gulch and Butte Hill Line (MGBH) in and near Butte, in Silver Bow County, MT.² The MGBH extends from milepost 0.0 at Rocker, west of Butte, to milepost 4.40 at the Butte Hill Yard (Missoula Gulch segment), and also extends north and east from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine (Butte Hill segment). BSB is acquiring the MGBH in order to facilitate abandonment of the line, an

¹ BSB has also invoked 49 CFR 1180.2(d)(1), pertaining to finance transactions involving more than one railroad. However, because the acquisition in question does not involve more than one railroad, this provision is inapplicable.

² The MGBH was most recently owned and operated by a non-profit corporation called the Butte/Anaconda Historic Park and Railroad Corporation (BAHPR, or the Railroad). The BAHPR operated a tourist train over the portion of the MGBH between Rocker and the former Butte Hill Yard. BAHPR operated over the MGBH under a lease from the State of Montana from 1988 to 1991, at which time the BAHPR acquired the MGBH. See Butte/Anaconda Historic Park and Railroad Corporation–Acquisition Exemption–State of Montana, Department of Commerce, ICC Finance Docket No. 31982 (ICC served Feb. 11, 1992). In 1994, the Montana Secretary of State's Office involuntarily dissolved the BAHPR for failing to maintain its filings. However, the BAHPR continued intermittently to operate a tourist train over the MGBH through 1996, did not seek reinstatement, and never distributed its assets following dissolution.

environmental cleanup, and conversion of the railroad beds to trail and public use.³

The exemption was scheduled to become effective on February 22, 2002.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34171, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy

³ BSB states that it intends to seek authority to abandon the line following receipt of authority to acquire it. In Land Conservancy–Acq. And Oper.–Burlington Northern, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998) (Land Conservancy), pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000), the Board disallowed the sale of an active rail line to a purchaser that had, immediately after the purchase, sought to abandon the line. Acquisitions of active rail lines under 49 U.S.C. 10901 are supposed to be for continued rail use. In Land Conservancy, the Board found that the deliberate course of conduct on the part of the abandoning carrier and the purchaser constituted a misuse of Board procedures and acted to preserve the integrity of its processes.

Here, the acquisition is not taking place pursuant to an agreement or course of conduct by the parties–no transaction has occurred–but rather pursuant to the operation of state law. BAHPR didn't sell the line to BSB. Rather, the Railroad was dissolved by the Montana Secretary of State. The County acquired the Railroad's assets pursuant to an order of the Court of the Second Judicial District of Montana, Silver Bow County. Acquisition of an active rail line–the line is not presently in service, but it has never been abandoned–requires Board authority and BSB has sought to comply with the statute. BSB has no desire to go into the railroad business–it is an agency of local government, not a commercial enterprise–and seeks merely to dispose of the property. Under the circumstances, BSB's notice invoking the class exemption to obtain authority for its acquisition is consistent with the statute.

of each pleading must be served on Susan J. Geer, Esq., Davis Graham & Stubbs LLP,
1550 17th Street, Suite 500, Denver, CO 80202.

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Decided: March 8, 2002.

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

Vernon A. Williams

Secretary