

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35380

SAN LUIS & RIO GRANDE RAILROAD—PETITION FOR A DECLARATORY ORDER

Decided: February 25, 2011

In response to a petition filed by San Luis & Rio Grande Railroad (SLRG), the Board instituted a declaratory order proceeding under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 on August 12, 2010, to determine whether the Board's jurisdiction preempts the land-use code of Conejos County, Colo., that may otherwise apply to SLRG's proposed operation of a truck-to-rail transload facility in Antonito, Colo. San Luis & Rio Grande R.R.—Petition for a Declaratory Order, FD 35380 (STB served Aug. 12, 2010) (August Decision). Specifically, the facility will be used to transfer containers and/or bags of contaminated soil and debris from trucks originating at Los Alamos National Laboratory in New Mexico to railcars.

In the August Decision instituting a proceeding, the Board opened the matter for public comment given the novel issues raised and gave SLRG the opportunity to supplement its filing. The Board requested that the filings focus on issues related to the Clean Railroads Act of 2008, 49 U.S.C. §§ 10501(c)(2), 10908-10910 (CRA), including whether SLRG's containers are original shipping containers under 49 U.S.C. § 10908(e)(1)(H)(i), and whether the soil SLRG plans to transload and transport is subject to the CRA. The August Decision also established an initial procedural schedule.

In response to the Board's request for public comments, the Board of County Commissioners of Conejos County, Colo., and Conejos County Clean Water, Inc. (CCCW), along with several individuals and community organizations, filed timely comments on October 12, 2010. In its comments, CCCW included a request for a public hearing proceeding in Conejos County. By decision served December 20, 2010, the Board granted the request for a public meeting in Conejos County to be held by Board staff to give the public an opportunity to provide comments on the proceeding.

Board staff conducted the meeting on February 17, 2011, in Conejos, Colo. At the meeting, a number of participants expressed interest in filing written comments and exhibits. Counsel for SLRG expressed interest in having the opportunity to reply to these comments and exhibits. Board staff suggested a schedule for these submissions. In accordance with this schedule, individuals wishing to file written comments and/or exhibits are directed to do so by March 1, 2011. If SLRG wishes to file a reply, it is directed to do so by March 15, 2011.

Filings may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and should otherwise comply with the instructions at the E-FILING link on the Board's website at <http://www.stb.dot.gov>.

Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. FD 35380 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each comment filed in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to SLRG's representative, John D. Heffner, 1750 K Street, N.W., Suite 200, Washington, DC 20006.¹

Comments filed at the Board and served on SLRG will be available on the Board's website. When SLRG files its reply to comments, one copy of that filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each commenter and party of record. SLRG's reply also will be available on the Board's website.

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

It is ordered:

1. Written comments and/or exhibits are due by March 1, 2011, and SLRG's reply is due by March 15, 2011.
2. This decision is effective on the date of service.

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

¹ The Board's Office of Public Assistance, Governmental Affairs and Compliance is available to help with the filing process and can be reached at (202) 245-0238.