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SERVICE DATE – AUGUST 19, 2009

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-1035]

Lake County, Oregon—Adverse Discontinuance of Rail Service—Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company

On July 30, 2009, Lake County, OR (County) filed an application under 49 U.S.C. 10903 asking the Board to authorize the third-party, or “adverse,” discontinuance of operating authority of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between milepost 456.89 at or near Alturas, CA, and milepost 512.30 at or near Lakeview, OR.

The line includes no stations and traverses United States Postal Service ZIP codes 96101, 96108, 97635, and 97630.

According to the County, the line was constructed and operated for many years by Southern Pacific Transportation Company (SP). In 1985, the Board’s predecessor, the Interstate Commerce Commission, authorized SP to abandon the line.¹

The County acquired the line from SP after its abandonment. Through its Railroad Commission, the County contracted with The Great Western Railway Company (GWR) to operate the line pursuant to a modified certificate of public convenience and

¹ See Southern Pac. Transp. Co.—Aband.—in Modoc County, CA and Lake County, OR, Docket No. AB-12 (Sub-No. 84) (ICC served Oct. 20, 1985).

necessity. The County terminated rail operations by GWR, effective November 1, 1997. Thereafter, the County obtained its own modified certificate and commenced operation of the line through its Lake County Railroad division.²

In 2007, the County leased the line to MR&L and MNRR.³ In 2009, according to the County, MR&L and MNRR materially breached their lease agreement with the County. The County further claims that, after the breach was not cured within the notice period required by that lease, it terminated the lease, effective May 7, 2009. The County states that it has resumed operation of the line pursuant to its residual common carrier authority, with Lake Railway acting as the County's agent for the provision of rail service on the line.

The County now seeks Board permission through an adverse discontinuance proceeding to terminate the regulatory authority of MR&L-MNRR to lease and operate the line so that it can proceed to remove them from the line.

In a decision served in this proceeding on June 15, 2009, the Board granted a petition filed by the County for exemptions from several statutory provisions and for waivers of certain Board regulations governing rail line discontinuances.⁴

² See Lake County Railroad—Modified Rail Certificate, STB Finance Docket No. 33581 (STB served Apr. 24, 1998).

³ See Modoc Railway and Land Company, LLC—Acq. & Oper. Exempt.—in Lake County, OR, STB Finance Docket No. 34995 (STB served Feb. 28, 2007); and Modoc Northern Railroad Co.—Acq. & Oper. Exempt.—in Lake County, OR, STB Finance Docket No. 34996 (STB served Feb. 28, 2007).

⁴ In response to a Board query in that decision regarding a slight discrepancy between the milepost numbers for the line in STB Finance Docket No. 33581 and in this proceeding, Lake County explains that it is using the milepost numbers set forth in STB Finance Docket Nos. 34995 and 34996 in which MR&L-MNRR obtained Board authority to lease and operate the line.

The County states that the line does not contain federally granted rights-of-way. Any documentation in the County's possession will be made available promptly to those requesting it. The County's entire case in chief for adverse discontinuance was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse discontinuance or protests (including protestant's entire opposition case) by September 14, 2009. The County shall file a reply, if any, by September 28, 2009. Because the County is providing for continued service on the line, all interested persons should be aware that this application is for adverse discontinuance and will not result in the abandonment of existing operations. Therefore, as discussed in the Board's June 15 decision, the Board has exempted this proceeding from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and waived its OFA regulations at 49 CFR 1152.27, and the Board will not entertain requests for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-1035 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any persons using e-filing should attach a document and otherwise comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. See 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0230 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

The Board's June 15 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 13, 2009.

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

Anne K. Quinlan

Acting Secretary