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SERVICE DATE - NOVEMBER 29, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-575 (Sub-No. 1X)

MONTANA RAIL LINK, INC.—ABANDONMENT EXEMPTION—
IN LAKE COUNTY, MT

Decided: November 25, 2002

By petition filed on August 13, 2002,¹ Montana Rail Link, Inc. (MRL) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 4.35-mile line of railroad near Polson, MT, including rail yard facilities in Polson. The line runs between milepost 29.05 and milepost 33.40 on MRL's 11th Branch Line Subdivision, in Lake County, MT.² We will grant the exemption, subject to two environmental conditions and standard employee protective conditions.

BACKGROUND

The existing Polson rail yard is located in the center of the City of Polson near schools, churches, and parks and is accessed exclusively by residential streets. Rail shipments into and out of Polson have been sporadic for at least 20 years. MRL proposes to abandon a segment of its line near Polson, including the Polson yard, and then develop a new rail yard on the outskirts of Polson. According to MRL, the proposal will assist the Montana Department of Transportation (MDT) in its plans to reconstruct and realign a primary highway, U.S. Highway 93, between Polson and Evaro, MT. MRL states that, as part of a proposed Federal Aid Project to widen U.S. Highway 93, it was approached by MDT with a request to relocate those portions of MRL's branch line track situated

¹ Notice of the filing was served and published in the Federal Register on August 30, 2002 (67 FR 55915).

² MRL's branch line extending between Dixon, MT (milepost 0.0), and Polson (milepost 33.40) was built by the Northern Pacific Railway and completed in 1918. This line is now identified as the 11th Branch Line Subdivision. In the past, the line has been called the Flathead Valley Branch and, during ownership by the Burlington Northern Railroad Company (BN), the 18th Subdivision of the Rocky Mountain Division. MRL acquired the line from BN in 1987.

within 5 miles of the end of the line in Polson. The proposed reconstruction and realignment of U.S. Highway 93 will require the highway to be moved into the current MRL right-of-way, requiring relocation of a minimum of 2,500 feet of track near Polson Hill. An agreement has been reached between MRL and MDT regarding a plan to construct new rail facilities, including a loading dock and storage tracks, south of Caffery Road (milepost 29). After extensive negotiations, the parties have reached an understanding pursuant to which MDT will fund construction of the new railroad facilities and, in exchange, MRL will deed its right-of-way between milepost 29.05 and milepost 32.89 (7th Avenue East Crossing) to MDT for use in Highway 93 construction and a possible pedestrian and bike trail.³

Currently there are three shippers on the line: Polson Ready Mix, American Stone (American), and Western Building Centers (Western) (formerly, Woody's). In 2001, Polson Ready Mix moved 37 shipments over the line, American moved 28, and Western moved 4; for the first 6 months of 2002, Polson Ready Mix moved 24 shipments, American 10, and Western 1. MRL states that none of the shippers has permanent facilities with track access in Polson. American and Polson Ready Mix truck decorative stone and landscape rock from their pits into Polson for loading by a portable auger, which has been set up in the existing yard, while Western transloads building supplies and lumber from rail cars spotted in the nearby Polson yard onto forklifts, trucks, and trailers for final movement to its facility. According to MRL, all of the shippers will have the option of continuing this type of transloading at the new Caffery rail yard. Although the haul distance for Polson Ready Mix and American to the new rail yard will be much less than those shippers now travel to load rail cars (approximately ½ mile compared to 4 miles), for Western the haul distance will be longer (4.5 miles compared to one block). MRL has informed the three shippers of the proposed abandonment. None has protested it.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

³ According to MRL, as a result of 3 years of discussion and study, an agreement was reached with the State of Montana, Lake County, MT, the Confederated Salish and Kootenai Tribes of the Flathead Nation (the Tribes), and the City of Polson to pursue a project requiring abandonment of the 4.35-mile line of railroad. MRL states that the segment of track proposed for abandonment is located within the boundaries of the reservation of the Tribes.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving MRL of the expense of owning and maintaining the line and by allowing it to apply its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because shippers will still have the option of transloading their shipments at the new rail yard. We also note that none of the shippers on the line opposes the proposal. Nevertheless, to ensure that these shippers are informed of our action, we will require MRL to serve a copy of this decision on the shippers within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

MRL has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 11, 2002.

In the EA, SEA noted that various environmental concerns have been raised by the Tribes. Therefore, SEA recommended that the following conditions be imposed: (1) prior to any salvage activities, MRL shall contact Lloyd Jackson at the Tribes' Shorelines Protection Office at 406-675-2700, ext. 1222, concerning possible impacts to Flathead Reservation wetlands and waters located within or adjacent to the railroad right-of-way; and (2) prior to any salvage activities, MRL shall contact the Tribes concerning appropriate best management practices to be used during salvage activities to minimize potential erosion and sedimentation, and to discuss appropriate health and safety protocols during the removal of rails and ties.

No comments to the EA were filed by the November 11, 2002 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that, if

implemented in accordance with SEA's recommended conditions, the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in the EA that, following abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.⁴

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the conditions that MRL shall: (1) prior to any salvage activities, contact Lloyd Jackson at the Tribes' Shorelines Protection Office at 406-675-2700, ext. 1222, concerning possible impacts to Flathead Reservation wetlands and waters located within or adjacent to the railroad right-of-way; and (2) prior to any salvage activities, contact the Tribes concerning appropriate best management practices to be used during salvage activities to minimize potential erosion and sedimentation, and to discuss appropriate health and safety protocols during the removal of rails and ties.

2. MRL is directed to serve a copy of this decision on Polson Ready Mix, American, and Western within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 9, 2002, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

⁴ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by September 19, 2002.

5. Provided no OFA has been received, this exemption will be effective on December 29, 2002. Petitions to stay must be filed by December 16, 2002, and petitions to reopen must be filed by December 24, 2002.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MRL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MRL's filing of a notice of consummation by November 29, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary