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December 22, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: STB Docket No. 36573
Western Nevada Railroad, LLC - Lease and Operation Exemption -
Line in Churchill County, NV

Dear Ms. Brown:

Enclosed for e-filing on behalf of Western Nevada Railroad, LLC is a Notice of Exemption being filed in accordance with 49 CFR 1150.43. The filing fee was paid using Pay.gov.

Please let me know if there are any questions regarding this filing.

Respectfully,

CLARK HILL

/s/ Eric M. Hocky

Eric M. Hocky

*Counsel for
Western Nevada Railroad, LLC*

FEE RECEIVED
December 22, 2021
SURFACE
TRANSPORTATION BOARD

EMH:e
Enclosures

FILED
December 22, 2021
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36573

**WESTERN NEVADA RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION –
LINE IN CHURCHILL COUNTY, NV**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10901**

(includes color images)

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*Counsel for
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Dated: December 22, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36573

WESTERN NEVADA RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION –
LINE IN CHURCHILL COUNTY, NV

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10901

This Verified Notice is filed pursuant to 49 C.F.R. §1150.31 by Western Nevada Railroad, LLC (“WNRR”) a non-carrier, to exempt from regulation under 49 U.S.C. §10901, its lease and operation of approximately 4,100 feet of existing railroad track at the Fernley Business Park (“FBP”) at or near Fernley / Darwin, Churchill County, Nevada (the “Rail Line”). A map of the Rail Line is attached as Exhibit A. As discussed more fully below, WNRR will, in the future, provide common carrier switching services for customers that locate at the FBP.

Notice

In accordance with 49 C.F.R. §1150.33, WNRR hereby provides the following information:

- (a) The full name and address of Applicant: Western Nevada Railroad, LLC, 1601 Fairfax Trafficway, Kansas City, KS 66115.
- (b) The name, address, and telephone number of the representative of WNRR who should receive correspondence: Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103, (215) 640-8523; or Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004, (202) 772-0916.

(c) FBP is a business park consisting of approximately 224 acres of property located in Churchill and Lyon Counties, Nevada, of which approximately 5 acres is currently able to receive rail service. WNRR is entering into a track lease and operating agreement (the “Lease”) with the owner of the facility, Fernley Business Park LLC, which will grant WNRR the right to lease, operate, and maintain approximately 4,100 feet of the private industrial tracks located at the FBP as the Rail Line. The Lease will also allow WNRR to operate and maintain the additional existing tracks at the FBP as 49 U.S.C. §10906 “excepted” industry / yard tracks, and to build out additional excepted tracks throughout the FBP to allow for expanded rail service to additional customers that will locate at the FBP. The tracks comprising the Rail Line covered by this Notice are shown on Exhibit A. Rail operations at the FBP will consist primarily of switching rail cars between industries in the FBP and the Rail Line. The Rail Line will connect to a rail line owned Union Pacific Railroad Company (“UPRR”) over which BNSF also has service rights. The proposed lease will be effective on or after the effective date of this Notice. Actual common carrier operations will commence after the proposed build out of the FBP is completed to the point that enough additional industries have located there and have requested rail service.¹

(d) Currently the track that will be the Rail Line is private industry track that is served by UPRR and BNSF (for dropping and pulling cars); switching service is provided by a third-party contract switching operator Western Nevada Transload, LLC as the agent of Fernley Business Park, LLC. Currently no common carrier operations are conducted on the Rail Line or at the FBP. Once the FBP is substantially developed, WNRR will

¹ WNRR anticipates that the build out could take up to two years.

commence operations as the common carrier operator of the Rail Line. It is anticipated that at that time the Rail Line will be used for interchanging cars with UPRR and BNSF. On or after the effective date of this Notice, WNRR will lease the Rail Line and will by this notice obtain a common carrier obligation to provide rail operations over the Rail Line to tenants of the FBP that will be served by industry tracks that will connect to the Rail Line. However, in the short term, as tracks on the FBP are being built out and additional rail-served industries locate at the FBP, service to existing railroad customers will continue to be performed by Western Nevada Transload as a contract switching operator, similar to the services performed currently.²

(e) Brief Summary of the Proposed Transaction:

Fernley Business Park, LLC owns an approximately 224-acre rail-served business park in Churchill County, Nevada. There are private tracks located on approximately 5 acres of the business park. Several rail-served tenants are located on the property. Currently, UPRR and BNSF move traffic to and from the property, and a private contractor, Western Nevada Transload, switches cars to and from the tenants as the agent of Fernley Business Park, LLC.

WNRR proposes to enter into a lease and operating agreement with Fernley Business Park, LLC for two existing tracks to use as a common carrier rail line. WNRR will also obtain the right to construct additional industrial tracks throughout the FBP in order to attract additional customers and rail business to the FBP.

WNRR intends to operate the two tracks designated as the Rail Line as shown on

² Even though it will not initially be offering common carrier service or operating over the Rail Line, WNRR intends to complete its registration as a carrier with Railinc and the Federal Railroad Administration for future WNRR operations and service on the Rail Line.

the map attached hereto as Exhibit A, as common carrier tracks, and the other existing tracks shown on the map as excepted yard tracks and industry tracks. When it commences operations, WNRR expects to use the Rail Line to interchange traffic with UPRR and BNSF.

WNRR's conversion of private switching and transload track to common carrier rail service is consistent with Board precedent in cases such as *Toledo Industrial Railroad LLC – Operation Exemption – Line in Lucas County, Ohio*, STB Finance Docket No. 36381 (served Feb. 20, 2020).

- (1) The name and address of the non-carrier company that currently owns the tracks that will become the Rail Line: Fernley Business Park LLC 11111 Santa Monica Boulevard, Suite 800 Los Angeles, California 90025.
- (2) WNRR's lease will be effective on or after the effective date of this Notice of Exemption, thirty days after the filing of the Notice.
- (3) The Rail Line is located in Churchill County, NV. There are no mileposts because the Rail Line is located inside a private industrial facility.
- (4) The total mileage of the Rail Line is approximately 4,100 feet.
- (f) Attached as Exhibit A to this Notice of Exemption is a track map of the Rail Line.³
- (g) WNRR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier. WNRR additionally certifies that its projected revenues after the transaction will not exceed \$5,000,000 per year.

³ The map also shows the existing associated 49 U.S.C. §10906 excepted yard and industry tracks.

- (h) No interchange commitments are being imposed on WNRR's operations.

Labor Protection

Pursuant to 49 U.S.C. §10901(c), approval of this transaction may not be subjected to labor protections.

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2)(i), no environmental documentation should be required because this proceeding involves operating authority under 49 U.S.C. §10901 for continued operations that will not exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (e)(5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because this Notice of Exemption merely involves a notice of exemption for operating authority to continue industrial switching services as a rail common carrier, and Board approval will be required to discontinue or abandon any service. WNRR has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.34.

Conclusion

Accordingly, WNRR requests that the Board issue a notice allowing the common carrier operations of WNRR to become effective at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,

/s/ Eric M. Hocky

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*Counsel for
Western Nevada Railroad, LLC*

Dated: December 22, 2021

VERIFICATION

I, Justin Lichter, Authorized Agent of Western Nevada Railroad, LLC verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on December 22, 2021.



Justin Lichter



EXHIBIT A

MAP

EXHIBIT "A"

FERNLEY BUSINESS PARK, LLC

SCALE: 1 IN = 250 FT
CALIFORNIA DIV.
UP. NEVADA SUBDIV. L.S. 8506
DATE: 10/22/2021

SECTION: 29
TOWNSHIP & RANGE:
20N 26E
MERIDIAN: MDM



Blue Track = Western Nevada Railroad Common Carrier Line

Yellow Track = Non-Jurisdictional Industry Track

Red Track = Class I Lead Track

EXHIBIT B

CAPTION SUMMARY

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36573

**WESTERN NEVADA RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION –
LINE IN CHURCHILL COUNTY, NV**

Western Nevada Railroad, LLC (WNRR) a non-carrier, has filed a verified notice of exemption pursuant to 49 C.F.R. §1150.31 to exempt from regulation under 49 U.S.C. §10901, its lease and operation of approximately 4,100 feet of existing railroad track (the Rail Line) owned by Fernley Business Park, LLC, also a non-carrier. The Rail Line is located on the approximately 224-acre Fernley Business Park (FBP), and is located at or near Fernley / Darwin, Churchill County, Nevada. The Rail Line has no mileposts. According to WNRR, no common carrier services are currently being offered on the Rail Line. After approval of the notice, and build out of additional excepted tracks at FBP, WNRR will provide common carrier switching services for customers located within the FBP.

According to the verified notice, WNRR will enter into a lease and operating agreement with Fernley Business Park, LLC to lease, operate, and maintain the Rail Line. The lease will also allow WNRR to construct additional yard and industry tracks throughout the FBP. WNRR states that in the short term while the FBP is being built out and additional rail customers locate at the FBP, the existing third-party switching contractor⁴ will continue to provide contract switching service. WNRR states that its lease will be effective on or after the effective date of this exemption.

WNRR states that the proposed lease and operation of the Rail Line does not involve any

⁴ The existing contract switching operator is Western Nevada Transload, LLC.

interchange commitments. WNRR certifies that its projected annual revenues are not expected to exceed \$5 million, or exceed the level that would qualify it as a Class III carrier.

According to WNRR, this action is categorically excluded from environmental review under 49 CFR §1105.6(c) and from historic preservation reporting requirements under 49 CFR §1105.8(b).

Comments must be e-filed with the Board and served on WNRR's representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

The Notice is filed under 49 C.F.R. §1150.31. If the 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 transaction. Petitions for stay must be filed no later than _____, 2021.

Board decisions and notices are available at www.stb.gov.

Decided: December __, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.