

SERVICE DATE – SEPTEMBER 12, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34936 (Sub-No. 1)

PORT OF MOSES LAKE—ACQUISITION EXEMPTION—MOSES LAKE, WASH.

Decided: September 10, 2025

Digest:¹ The Board directs the Port of Moses Lake to file a notice of exemption, petition for exemption, or application for authority to acquire approximately 0.5 miles of trackage as part of a rail construction project in and near the City of Moses Lake, Wash., that the Board previously authorized.

On April 28, 2025, the Port of Moses Lake (the Port) filed a Petition for Supplemental Authorization to the Extent Needed (Apr. 2025 Pet.) seeking Board authority to acquire an approximately 0.5-mile segment of track (the Track Segment) that is an extension of a rail line that the Board has previously authorized the Port to acquire. As explained in this decision, the Port must obtain Board authority to acquire the Track Segment by filing a notice of exemption, petition for exemption, or application.

BACKGROUND

On August 28, 2008, in Docket No. FD 34936, Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., the Port filed a petition seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct approximately 7.6 miles of rail line, entirely within the State of Washington, as part of its Northern Columbia Basin Railroad Project, in and near the City of Moses Lake. The Port's petition involved construction of two lines: (1) between the communities of Wheeler and Parker Horn (Segment 1); and (2) between existing trackage of the Columbia Basin Railroad Company, Inc. (CBRW), and the east side of the Grant County International Airport (Segment 2). Following the completion of the environmental review process, which was conducted in conjunction with the Washington State Department of Transportation, the Board authorized construction of Segments 1 and 2, subject to environmental mitigation measures, finding that the construction project met the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

standards for an exemption under 49 U.S.C. § 10502. Port of Moses Lake—Constr. Exemption—Moses Lake, Wash. (Aug. 2009 Decision), FD 34936 et al. (STB served Aug. 27, 2009).²

In its 2008 petition, the Port also sought an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to acquire from CBRW an approximately 3-mile rail line from Parker Horn, near Stratford Road, to a point near the Grant County International Airport (Segment 3), which would connect Segments 1 and 2. See Aug. 2009 Decision, slip op. at 1, 3-4. The Board considered the acquisition request in Docket No. FD 34936 (Sub-No. 1) and granted the acquisition exemption in its Aug. 2009 Decision.

However, with respect to the Track Segment, the Board's Aug. 2009 Decision stated:

We note that the Preliminary [Environmental Assessment] states that the Port plans to acquire approximately 0.5 miles of existing track located north of where Segments 2 and 3 meet for which no construction or rehabilitation is planned. However, this portion of existing track was not included in the Port's acquisition exemption. Therefore, the Port or other appropriate party will need to obtain appropriate authority to acquire this portion of existing track prior to operation over it.

Id. at 4 n.3.

In its April 2025 Petition, the Port seeks, pursuant to 49 C.F.R. § 1117.1, supplemental authorization, to the extent needed, to acquire the Track Segment. The Port states that it acquired, via quitclaim deed, "CBRW's rail and land interest from approximately Route 17 to the connection of Port land and track near Grant County International Airport on March 10, 2025. . . ." (Apr. 2025 Pet. 2-3 (citing Aug. 2009 Decision, slip op. 4 n.3).) According to a map submitted as part of the April 2025 Petition, this acquisition included Segment 3 and the Track Segment. (Id., Exh. 2.)

The Port acknowledges that it may still need authorization to acquire the Track Segment, specifically referring to footnote 3 in the Aug. 2009 Decision. (Apr. 2025 Pet. 3.) It further states that it "has been unable to determine the exact circumstances that resulted in the footnote excluding the [Track Segment] from the original authorization." (Id.)

Therefore, the Port now seeks Board authority "via exemption, to the extent needed" to acquire the Track Segment. (Apr. 2025 Pet. 6.) In support of its request, the Port argues that the transaction, as described in its 2008 Petition for Exemption, remains unchanged and that the eventual rail operations and planned rehabilitation of the Segment 3 trackage, have not changed. (Id. at 4-5.) The Port argues that no parties or shippers will be prejudiced by authorizing acquisition of the Track Segment. (Id. at 5.) The Port further states that any oversight with

² On November 2, 2018, the Port petitioned to reopen the August 2009 Decision to modify the routes for the Segment 1 and Segment 2 constructions. Following a supplemental environmental review of the proposed modifications, the Board granted the petition and approved the modifications, subject to environmental mitigation measures. Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936 (STB served Dec. 3, 2019).

respect to the Track Segment “was inadvertent, and unintentionally clouded by the distinction between land ownership and track ownership, the passage of time since the 2009 authorization decision, changes in personnel, mapping inconsistencies, and potentially the wording associated with including all three segments in one Petition for Exemption.” (Id.)

Alternatively, the Port argues that the Track Segment could be treated as excepted track under 49 U.S.C. § 10906, for which no acquisition authority is necessary. (Id. at 4.)

DISCUSSION AND CONCLUSIONS

The Port must obtain Board authority to acquire the Track Segment. Footnote 3 to the Board’s Aug. 2009 Decision indicates that the Track Segment was not part of the Board’s acquisition authorization. The Port filed its petition to acquire the Track Segment pursuant to 49 C.F.R. § 1117.1, which provides an avenue for relief not otherwise provided for in the Board’s rules. However, the Board has procedures that apply specifically to the type of relief the Port seeks. Conversely, petitions filed under 49 C.F.R. § 1117.1 allow a party to seek “relief not provided for in any other rule.” The Board has stated that “[§]1117.1 is a ‘catch all’ provision that provides parties with a way to ask the Board to exercise its discretion to remedy unusual situations.” Tongue River R.R.—Constr. & Operation—W. Alignment, FD 30186 (Sub-No. 3), slip op. at 4 (STB served Mar. 11, 2003). The Port’s proposed acquisition is not an unusual situation. The Board routinely grants § 10902 acquisition authority pursuant to notices of exemption, petitions for exemption and, less frequently, applications.³ Therefore, the Port’s petition will be denied. In order to obtain the necessary authority to acquire and operate the Track Segment, the Port may file a notice of exemption, petition for exemption, or application pursuant to 49 U.S.C. § 10902.

Under 49 U.S.C. § 10902, Class II and Class III rail carriers may acquire or operate an extended or additional rail line. The Board adopted a class exemption at 49 C.F.R. § 1150.41, similar to that for noncarriers at 49 C.F.R. § 1150.31, to apply to transactions in which Class III rail carriers seek to acquire additional rail properties. The Board’s streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters. See, e.g., Rio Grande Pac. Corp.—Continuance in Control Exemption—Colo., Midland & Pac. Ry., FD 36470 et al., slip op. at 3-4 (STB served Mar. 25, 2021). And, in matters involving non-routine or acquisitions raising substantial questions or controversies, parties may file a petition for exemption pursuant to 49 U.S.C. § 10502. See, e.g., Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36738, slip op. at 2-3 (STB served Dec. 15, 2023). Notices of exemption and petitions for exemption are also commonly used to

³ 49 U.S.C. § 10902, and the regulations at 49 C.F.R. § 1150.41, govern acquisitions by common carriers. The Board’s Aug. 2009 Decision stated that “[b]ecause Segment 3 is an existing line of railroad, when the Port acquires Segment 3, it will assume the common carrier obligation as to that segment.” (Aug. 2009 Decision, slip op. 2).

address requests for after-the-fact authority. But requests for authority pursuant to 49 C.F.R. § 1117.1 are not.⁴ The Port may also choose to file a full application.

In addition, although the Port argues that the Track Segment may be excepted track under 49 U.S.C. § 10906 (Apr. 2025 Pet. 4), it provides no evidence to support this assertion. Section 10906 provides that the Board does not have authority over the acquisition of spur, industrial, team, switching, or side tracks. In determining if a particular track is excepted track under § 10906, the Board has adopted a case-by-case approach that examines factors such as the track's intended use, physical characteristics, relationship to the rail system, and history. Liberty Harbor Holding LLC—Pet. for Declaratory Ord., FD 36772, slip op. at 2-3 (STB served Oct. 3, 2024). Here, the Port has not provided information regarding the Track Segment that would allow the Board to conclude that it is excepted track.

In fact, it appears that the Track Segment is not excepted track. The Track Segment was the subject of a 2007 proceeding, in which CBRW acquired it and other trackage from BNSF Railway Co. Columbia Basin R.R.—Acquis. & Operation Exemption—BNSF Ry., FD 35066, slip op. at 1 (STB served Nov. 16, 2007).⁵ In its November 1, 1997, notice of exemption, CBRW stated that it intended “to provide common carrier freight service over the subject lines, and the abandonment of CBRW’s operations over the subject lines would require prior approval or an exemption.” (CBRW Notice of Exemption 3, Columbia Basin R.R.—Acquis. & Operation Exemption—BNSF Ry., FD 35066.) CBRW’s representations and actions demonstrate that the Track Segment is not excepted track, as neither abandonment nor acquisition authority would be required for track classified as such. See 49 U.S.C. § 10906; see also Chi. Rail Link—Lease & Operation Exemption—Union Pac. R.R., FD 33323, slip op. at 3 (STB served Dec. 31, 1997) (“[T]he jurisdictional status of track must be determined by its intended use, and . . . use of the subject track as ‘an extended or additional rail line’ removes it from the exclusion of section 10906.”).

Finally, the Board notes that, as indicated on various maps the Port submitted as part of its April 2025 petition: (1) the Track Segment may be more than 0.5 miles long; and (2) there are

⁴ The Port suggests that the authority it seeks may be “after-the-fact.” (Apr. 2025 Pet. 4.) However, the cases the Port cites in support of its request for after-the-fact authority involved requests submitted pursuant to notice of exemption or petition for exemption procedures, not requests made pursuant to 49 C.F.R. § 1117.1. See Delray Connecting R.R.—Trackage Rights Exemption—Consolidated Rail Corp., FD 35180 (STB served Jan. 9, 2009) (notice of exemption); David W. Wulfson et al.—Control Exemption—Clarendon & Pittsford R.R. et al., FD 33607 (STB served Aug. 20, 1998) (petition for exemption); Ark.-Okla. R.R.—Acquis. and Operation Exemption—State of Okla., FD 36323 (STB served Sept. 19, 2019) (petition for exemption).

⁵ In the proceeding, CBRW acquired approximately 74 miles of trackage. This included trackage extending “from milepost 20.0 at or near Moses Lake to milepost 5.6 at or near Sieler, WA.” Id. at 1. The map submitted with CBRW’s 2007 notice of exemption, and the Exhibit 2 map submitted with the Port’s April 2025 Petition, indicate that the trackage includes a portion or the entirety of the Track Segment.

additional parallel tracks located near the Track Segment. The Port acknowledges their existence, noting that there are “several adjacent parallel industrial spurs” that mirror the Track Segment. (Apr. 2025 Pet. 4.) In light of these ambiguities, as part of any subsequent filing for acquisition authority, the Port should clarify the length of the Track Segment and whether that is the entirety of the rail line that it needs Board authority to acquire.

For these reasons, the Board will deny the Port’s petition. The Port may seek acquisition authority through a notice of exemption, petition for exemption, or application, as appropriate.

It is ordered:

1. The Port’s petition is denied, as described above.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.