

ENTERED
Office of Proceedings
May 8, 2025
Part of
Public Record

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

2001 L Street N.W.
Suite 720
Washington, D.C. 20036

Crystal Zorbaugh
czorbaugh@MULLINSLAWGROUP.NET

Telephone: (202) 663-7850
Direct: (202) 663-7831

May 8, 2025

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Sierra Northern Railway—Acquisition and Operation Exemption—in Yolo County, Cal., FD 36841
SNR's Response to the District's Request for the Board to Issue a Housekeeping Stay

Dear Ms. Brown:

On May 8, 2025, the Sacramento-Yolo Port District (the “District”) asked the Surface Transportation Board (the “STB” or “Board”) to issue a housekeeping stay in the above-captioned proceeding¹, alleging improper service by SNR’s counsel and alleging that SNR intentionally failed to seek construction authority from the Board for the approximately 0.58 miles of double-track rail line at issue in this proceeding (the “Line”). But not only are the District’s allegations unfounded, the District’s allegations fail to address, or to satisfy, the Board’s criteria for a Housekeeping Stay or any stay. The Board should thus deny the District’s request.

While there are similarities between a housekeeping stay and a “traditional” stay, they are quite different. Specifically, a housekeeping stay is sometimes used when the Board believes that some aspect of a proceeding is unclear or there is some minor missing information or unclear issue that the Board needs time to evaluate. No such issues exist here. In the absence of such issues, the Board has held that, in the case of a notice of exemption such as this, the correct action is for parties seeking to challenge a notice of exemption to file a revocation petition, not to request a housekeeping stay. See Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC, FD 34177, slip op. at 9 (STB served

¹ See the District’s Request for the Board to Issue a Housekeeping Stay filed on May 8, 2025, (“District Letter”) in Sierra Northern Railway—Acquisition and Operation Exemption—in Yolo County, Cal., FD 36841, p. 4, n. 4 (“SNR’s Acquisition and Operation Exemption”)

MULLINS LAW GROUP PLLC

May 8, 2025

Page 2

July 22, 2002) (noting that generally any concerns related to an acquisition exemption will be addressed through the revocation process). In any event, the District fails here to meet the standard for any stay. The criteria governing disposition of a traditional petition for stay (and in some instances the same criteria has been applied to housekeeping stays) are: “(1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest.” See Canadian Pacific Railway Company—Trackage Rights Exemption—Norfolk Southern Railway Company, FD 34561, slip op. at 3 (STB served October 27, 2004); citing Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); see also Arkansas Electric Cooperative Corporation—Petition for Declaratory Order, FD 35305, slip op. at 2 (STB served November 5, 2010) (denying petition for housekeeping stay because the petitioners failed to show that irreparable harm would occur in the absence of a stay). The District fails to address any of these criteria or show that there is any missing or incorrect information in the Notice. Nor do the District’s allegations satisfy any of these criteria. And the District does not present any difficult legal or policy issues that would warrant a stay. See Lehigh Railway, LLC—Lease Exemption Containing Interchange Commitment—Norfolk Southern Railway Company, FD 36062, 2016 STB LEXIS 291 * 3 (STB served October 14, 2016).

As to the District’s specific allegations: First, service by SNR’s counsel, Mullins Law Group (“MLG”), on the District was entirely proper and fully complied with the Board’s directive. As the Board’s May 1, 2025, decision did not specify a method of service,² MLG followed its custom and practice and served the parties via certified mail.³ Not only does such service by certified mail ensure that the recipient (in this case, the District) will receive the mailing (in this case a copy of the Board’s May 1, 2025, Decision), but such service generates a delivery receipt, allowing MLG to demonstrate, if questioned, that it complied with the Board’s service request. Also, while it is true that SNR’s notice of exemption (“Notice”) is tangentially related to the Leased Track,⁴ and that the parties’ relevant lease lists the District’s General Manager, Rick Toft, as the point of contact, nothing sets forth how SNR is to notify the District of SNR’s actions as to its personally-owned tracks, which are the only tracks at issue in SNR’s Notice. Further, while Ken Beard (of SNR) and other SNR representatives have communicated

² Sierra Northern Railway—Acquisition and Operation Exemption—in Yolo County, Cal., FD 36841, slip op. at 2 (STB served May 1, 2025) (“May 1, 2025, Decision”).

³ In MLG’s experience, Certified Mail, as opposed to First Class mail, is not only more efficient but also allows confirmation of receipt by the parties being served.

⁴ See SNR’s Verified Notice of Exemption Pursuant to 49 CFR 11540.41, Et Seq. filed on April 15, 2025 in SNR’s Acquisition and Operation Exemption (“SNR’s lease and operation within the Port District of the 49 U.S.C. 10901 (main line) and 49 U.S.C. 10906 (excepted track) have been subject to the Board’s jurisdiction since 2003.”). SNR owns the real estate for the Line and the real estate on which the Port’s track lies adjacent to the SNR’s line. The District has an easement over SNR’s property.

with Mr. Toft many times over the years as to the Port's tracks, they have also communicated many times with other District employees and agents who purported to speak for the District.⁵

As the District's General Manager, Mr. Toft has never, before today (and then only through the District's counsel), expressed any objections to, or in any other way discussed, SNR's 2020 construction of SNR's original 49 U.S.C.S. § 10906 track ("10906 track"),⁶ SNR's 2022 construction of SNR's secondary 10906 track, or SNR's recent 2024-25 short extension of SNR's 10906 track.⁷ Nor did SNR expect to engage in any such discussions with the District, as the Line is wholly owned and operated by SNR, and the vast majority of the track that comprises the Line has been in operation by SNR for many years. Because the Line has been in operation by SNR for many years without the District showing any interest in it, because MLG's service on the District was proper and in full compliance with the Board's Decision, because the District is unlikely to prevail on the merits related to its false allegations of improper service, and because the District has failed to demonstrate (or even to address) that it or any other party will suffer irreparable harm from any allegedly improper service, or that a stay is in the public interest, the Board should deny the District's request for a housekeeping stay as unwarranted.

Second, there are no relevant issues as to "why SNR did not seek construction authority for the track."⁸ When SNR originally built its track, it intended the Line to be 10906 industry or spur track to serve transloading customers as well as aid in continuing to serve the Districts customers, CEMEX and Farmer Rice, by providing ongoing maintenance to locomotives and track equipment. At the time of SNR's construction of the original track (February to April 2020) and the secondary track (May to October, 2022), SNR could not foresee the expansion of the needs of transloading customers.⁹ The extension SNR began to build in 2024, and finished earlier this year in 2025, was only a small increment of 500 to 600 feet, added to better serve several existing customers, including Advanced Logistics transloading opportunities for Phillips 66 and Silica Services¹⁰

⁵ For example, Mr. Beard has spoken to the Mayor, the City Manager, and City Council Members, concerning the Leased Track.

⁶ No Board approval is necessary for rail carriers to construct additional 10906 tracks.

⁷ In recent years, SNR has expressed publicly multiple times and in different forums an intent to build additional 10906 tracks to support its customers and its operations.

⁸ See District Letter at p. 2.

⁹ For example, in 2022, the secondary track against the fence line was built to transport biofuels for Advanced Logistics, but this expansion did not warrant a conversion of the track to 49 U.S.C.S. § 10901 (mainline) track.

¹⁰ SNR, at the District's request, has served CEMEX for over 13 years. See <https://www.bizjournals.com/sacramento/news/2012/01/25/port-west-sacramento-cemex-rail-extensio.html>.

MULLINS LAW GROUP PLLC

May 8, 2025

Page 4

SNR most certainly did not intend to evade any environmental review by the Board's Office of Environmental Analysis ("OEA") pursuant to the National Environmental Policy Act ("NEPA") and Board rules.¹¹ SNR did not even consider any track conversion until very recently, when a number of its customers—which now include P66, Musket, Silica Services, Stella Jones, Carbide Industries, Advanced Logistics, and Lineage¹²—expanded their need for rail service. Accordingly, "SNR's planned and actual use of the track at inception and today" has evolved over time, with the goal of better serving its transloading customers.

Because the District is not likely to prevail on the merits as to its allegation that SNR intentionally sought not to seek the Board's authority for construction, a housekeeping stay is unwarranted. Such a stay is also unwarranted because the District has failed to demonstrate (or even to address) either that it or any other party would suffer irreparable harm or that a stay is in the public interest. In fact, not only would having the Line under the Board's jurisdiction not harm the District (as the District does not own the Line and has no interest in the Line), but it would actually benefit the public for SNR to have a common carrier obligation to serve these railroad customers under a common carrier obligation pursuant to the Board's authority.

Third, SNR's customers' request for certainty as to their rail service needs was driven, at least in part, by their knowledge that SNR recently had to go to court for a temporary restraining order to prevent the District from blocking SNR's road access to its own railroad property via a route SNR has used for some years.¹³ SNR is pursuing this track conversion, not because it always planned to (as the District falsely alleges) but because, as a common carrier, SNR wants to demonstrate to its rail customers, and to the community it serves, that it is ready and willing to provide the transportation services necessary for their continued operations and growth.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Attorney for Sierra Northern Railway

cc: Parties of Record

¹¹ During construction, SNR complied with all federal laws.

¹² These customers sought more certainty related to their expanding operations and investment into their facilities, and SNR is attempting to provide this certainty by pursuing the track conversion through the exemption process and publishing a tariff to have the Line be subject to the Board's jurisdiction to give customers comfort in knowing that SNR as a common carrier must provide service upon reasonable demand.

¹³ See Sierra Northern Railway v. Port of West Sacramento and Ramcon Engineering, No. 2:24-cv-01899-DJC-JDP (E.D.Ca. 2024) (granting SNR's temporary restraining ordering enjoining defendants "from blocking or impeding Plaintiff's access to the subject property through the North Access route...").