

Office of Railings

OCT 25 2011

Office of
Record

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OCT 25 2011

October 24, 2011

By UPS overnight mail

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FILED

OCT 25 2011

**SURFACE
TRANSPORTATION BOARD**

Re: Finance Docket No. 35560 | *Mineral Range Inc -- Acquisition and Operation
Exemption -- Rail Line of Lake Superior & Ishpeming Railroad Company between
Landing Junction and Humboldt Junction, and Reinstitution of Rail Service over
Railbanked Right-of-Way between Humboldt Junction and Humboldt, in
Marquette County, MI*

Docket No. AB-68 (Sub-No. 4X), *Lake Superior & Ishpeming Railroad Company
-- Abandonment Exemption -- in Marquette County, MI*

Dear Ms. Brown:

Enclosed please find an original and 10 copies of Verified Notice of Exemption Under 49
C.F.R. § 1150.31 and Petition For Partial Vacation Of Notice Of Interim Trail Use, for filing
with the Board in the above referenced matters.

Also enclosed is a check in the amount of \$2,050 for the filing fees.

FEE RECEIVED

OCT 25 2011

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant-Petitioner

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BEFORE THE
SURFACE TRANSPORTATION BOARD

MINERAL RANGE INC -- ACQUISITION	)	
AND OPERATION EXEMPTION -- RAIL	)	
LINE OF LAKE SUPERIOR &	)	
ISHPEMING RAILROAD COMPANY	)	
BETWEEN LANDING JUNCTION AND	)	FINANCE DOCKET
HUMBOLDT JUNCTION, AND	)	NO. 35560
REINSTITUTION OF RAIL SERVICE	)	
OVER RAILBANKED RIGHT-OF-WAY	)	
BETWEEN HUMBOLDT JUNCTION	)	
AND HUMBOLDT, IN MARQUETTE	)	
COUNTY, MI	)	
	)	
	)	

LAKE SUPERIOR & ISHPEMING	)	DOCKET NO.
RAILROAD COMPANY --	)	AB-68 (SUB-NO. 4X)
ABANDONMENT EXEMPTION -- IN	)	
MARQUETTE COUNTY, MI	)	

**VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.31
AND
PETITION FOR PARTIAL VACATION OF NOTICE OF
INTERIM TRAIL USE**

MINERAL RANGE INC
P.O. Box 577
Hancock, MI 49930

Applicant-Petitioner

By: THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant-Petitioner

DATE FILED: October 25, 2011

OCT 25 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

MINERAL RANGE INC -- ACQUISITION	)	
AND OPERATION EXEMPTION -- RAIL	)	
LINE OF LAKE SUPERIOR &	)	
ISHPEMING RAILROAD COMPANY	)	
BETWEEN LANDING JUNCTION AND	)	FINANCE DOCKET
HUMBOLDT JUNCTION, AND	)	NO. 35560
REINSTITUTION OF RAIL SERVICE	)	
OVER RAILBANKED RIGHT-OF-WAY	)	
BETWEEN HUMBOLDT JUNCTION	)	
AND HUMBOLDT, IN MARQUETTE	)	
COUNTY, MI	)	
	)	
	)	

LAKE SUPERIOR & ISHPEMING	)	DOCKET NO.
RAILROAD COMPANY --	)	AB-68 (SUB-NO. 4X)
ABANDONMENT EXEMPTION -- IN	)	
MARQUETTE COUNTY, MI	)	

**VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.31
AND
PETITION FOR PARTIAL VACATION OF NOTICE OF
INTERIM TRAIL USE**

Pursuant to the class exemption for noncarrier acquisition and operation of rail lines at 49 C.F.R. § 1150.31 *et seq.*, MINERAL RANGE INC (MRI) hereby provides notice of its exemption from 49 U.S.C. § 10901 for its acquisition from Lake Superior & Ishpeming Railroad Company (LSI) and operation of a rail line between Milepost 73.60 at Landing Junction and Milepost 85.66 at Humboldt Junction, a distance of 12.06 miles (as well as Yard Track Nos. 5 and 6 in Ishpeming Yard and incidental trackage rights over approximately 2,500 of track jointly owned by LSI and Canadian National Railway Company (CN) in order to access those Yard tracks), and for its reinstitution of rail service over a railbanked right-of-way between Milepost

85.66 at Humboldt Junction and Milepost 87.56 at Humboldt, a distance of 1.90 miles, all in Marquette County, MI.

In addition, pursuant to 49 C.F.R. § 1117.1, MRI hereby petitions for partial vacation of a Notice of Interim Trail Use (NITU) for the 1.90-mile Humboldt Junction-Humboldt right-of-way in order to permit reinstitution of rail service.

BACKGROUND

These proceedings involve a 14-71-mile right-of-way that LSI has not operated for more than five years due to absence of traffic. MRI proposes to acquire and operate 13.96 miles of that right-of-way. The remaining 0.75 miles will be owned by the shipper to be served. The right-of-way is composed of three segments which are in different postures, i.e. (*see, also*, Appendix 1 attached hereto):

- (1) a 12.06-mile segment between Landing Junction in Ishpeming Rail Yard and Humboldt Junction. This segment is owned by LSI, who has agreed to convey it to MRI. CN has trackage rights over this segment. MRI will acquire this segment subject to CN's trackage rights. This segment has not been approved for abandonment. Track materials in this segment are intact. For ease of reference, this segment will sometimes be referred to as Segment 1;
- (2) a 1.90-mile segment between Humboldt Junction and Humboldt. LSI was authorized to abandon this segment, but instead entered into a trail use agreement with the Michigan Department of Natural Resources (MDNR) for railbanking of the segment. Track materials in this segment have been removed. A demand for rail service over this segment has arisen. LSI is not interested in responding to

that demand. MRI proposes to acquire authority to acquire and operate this segment. MRI will relay the track materials in order to respond to the demand for rail service. MRI is petitioning for partial vacation of the notice of interim trail use as applied to this segment because such trail use would not be consistent with reinstituted rail service. For ease of reference, this segment will sometimes be referred to as Segment 2; and

- (3) a 0.75-mile segment between Humboldt and Humboldt Mill. This is an industrial spur track owned by Kennecott Eagle Minerals Company (Kennecott), which is opening a copper and nickel mine and mill at Humboldt Mill. Track materials in this segment have been removed. Those track materials will be replaced by Kennecott. Board authority is not required for MRI's operation over that segment. For ease of reference, this segment will sometimes be referred to as Segment 3.

The transaction also involves LSI's conveyance of two tracks in Ishpeming Yard to MRI, and incidental trackage rights for MRI over a track jointly owned by LSI and CN to enable MRI to access those Yard tracks.

The eastern terminus of Segment 1 at Landing Junction is located in the Ishpeming Rail Yard, as are Yard Track Nos. 5 and 6. Yard Track No. 5 is 2,278 feet in length. Yard Track No. 6 is 2,345 feet in length. Those Yard Tracks are shown in Appendix 2. As shown in Appendix 1, at Landing Junction, Segment 1 connects with a rail line that is jointly-owned by LSI and CN. It is over that jointly-owned track that approximately 2,500 feet of incidental trackage rights are needed in order to enable MRI to access Yard Track Nos. 5 and 6 from Landing Junction. At its western terminus at Humboldt Junction, Segment 1 connects with a rail line owned by CN.

In a decision served November 5, 2004, in Docket No. AB-68 (Sub-No. 4X), *Lake Superior & Ishpeming Railroad Company -- Abandonment Exemption -- in Marquette County, MI*, LSI was authorized to abandon a rail line between Milepost 85.6 at Humboldt Junction and the end of track at Milepost 94.5 at Republic Mine, a distance of 8.9 miles in Marquette County, MI.^{1/} In a decision in that docket served January 19, 2005, the Board issued a NITU that authorized LSI to negotiate with MDNR for railbanking and interim recreational trail use of the right-of-way of that rail line. The negotiating period under that NITU was extended to December 15, 2005 by virtue of Board decisions served August 23, 2005 and November 23, 2005. By letter dated December 14, 2005, copy attached as Appendix 3, MDNR notified the Board that it had entered into an agreement with LSI for railbanking and interim recreational trail use of the Humboldt Junction-Republic Mine right-of-way. LSI removed the rails and track materials from that right-of-way. The right-of-way continues to be railbanked and is currently an unimproved trail.

Kennecott is in the process of opening a copper and nickel mine, with its processing plant at Humboldt Mill. That has resulted in a demand for rail transportation to ship the products of that mine and mill to market. The transactions involved in this pleading are designed to enable MRI to respond to that demand by transporting those mineral products by rail from Humboldt Mill to connection with CN at Yard Track Nos. 5 and 6 in Ishpeming Yard near Landing Junction.

^{1/} Humboldt Junction is located at Milepost 85.66 rather than 85.6 as stated in that decision.

Segment 2 is a 1.90-mile portion of the 8.9-mile railbanked right-of-way referred to above. MRI proposes to acquire and to operate that Segment, thereby reactivating rail service over it. Reactivation of rail service over Segment 2 will require that track materials be relaid in the right-of-way of that Segment. Reactivation of rail service over Segment 2 will be inconsistent with trail use of the right-of-way of that Segment. Accordingly, MRI has petitioned for partial vacation of the NITU as applied to the right-of-way in Segment 2. MRI understands that Kennecott is attempting to aid MDNR in relocating the portion of the 8.9-mile trail that will be disrupted by reactivation of rail service over Segment 2.

As noted, Segment 3 will be operated as private track. Accordingly, MRI's operation over that Segment will not be subject to Board jurisdiction.

**THE PROPOSED EXEMPTION AND
PARTIAL VACATION OF NITU ARE WARRANTED**

An exemption for acquisition and operation of Segments 1 and 2 is covered by the class exemption at 49 C.F.R. § 1150.31, *et seq.* Information required by that class exemption is provided hereinafter. MRI's acquisition and operation of those Segments will not have an adverse effect on CN's trackage rights over Segment 1 because MRI will honor those trackage rights. Incidental trackage rights for MRI to operate over the jointly-owned LSI-CN track between Landing Junction and Yard Track Nos. 5 and 6 in Ishpeming Yard are necessary to provide access by MRI to those Yard Tracks that are included in the acquisition and operation.

MRI is an appropriate party to reinstitute rail service over Segment 2. LSI is the rail carrier that formerly provided rail service over that Segment. LSI has not expressed an interest in reinstituting rail service over that right-of-way in response to Kennecott's demand for such

service. The right to reactivate a railbanked line is not an exclusive right. *Iowa Power - Const. Exempt - Council Bluffs, Iowa*, 8 I.C.C.2d 858, 866-67 (1990); *Georgia Great Southern Division - Aband. & Discon. of Service*, 6 S.T.B. 902, 907 (2003). A *bona fide* petitioner, under appropriate circumstances, can request that an NITU be vacated to permit reactivation of line segments for continued rail service in the future. *GNP RLY, Inc. -- Acq. & Oper. Exempt. -- Redmond Spur and Woodinville Subdivision*, 2011 STB LEXIS 283 at *11-12 (Docket No. FD 35407, decision served June 15, 2011). MRI is such a *bona fide* petitioner. Acquisition and operation are the appropriate means to obtain such authority.

MRI's Petition for Partial Vacation of MDNR's NITU should be granted. An interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service. *King County, WA - Acq. Exempt. - BNSF Railway Company*, 2009 STB LEXIS 462 at *7 (STB Finance Docket No. 35148, decision served September 18, 2009).

MRI's rehabilitation of Segment 2 by relaying track materials in the right-of-way of that Segment is not subject to Board jurisdiction because the authorized abandonment of Segment 2 was not consummated. Consequently, LSI would not have required Board authority or an exemption to relay the track materials in the right-of-way of that Segment. Cf. *Union Pacific RR - Petition - Rehabilitation of MO-KS-TX RR*, 3 S.T.B. 646, 650-653 (1998). Neither does MRI require such authority or exemption as a result of having stepped into the shoes of LSI in acquiring, operating, and reactivating rail service over that Segment.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

The following is furnished pursuant to 49 C.F.R. § 1150.33:

(a) *The full name and address of applicant;*

Applicant is Mineral Range Inc, P.O. Box 577, Hancock, MI 49930.

- (b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

Applicant's representative who should receive correspondence is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, #1890, Chicago, IL 60604-1112, 312-236-0204.

- (c) *A statement that an agreement has been reached or details about when an agreement will be reached;*

An agreement has been reached for MRI's acquisition from LSI and for operation of the rail line.

- (d) *The operator of the property;*

MRI will be the operator of the property.

- (e) *A brief summary of the proposed transaction, including:*

- (1) *The name and address of the railroad transferring the subject property;*

The railroad transferring the rail line is Lake Superior & Ishpeming Railroad Company, P.O. Box 2000, Ishpeming, MI 49849 (LSI). LSI and Canadian National Railway Company, 935 de LaGauchetière St. West, Montreal, QC Canada H3B 2M9, will be granting the incidental trackage rights to MRI between Landing Junction and Tracks 5 and 6 in the Ishpeming Yard.

- (2) *The proposed time schedule for consummation of the transaction;*

The transaction will be consummated no earlier than thirty days after this Notice of Exemption is filed at the Board.

- (3) *The mileposts of the subject property, including any branch lines; and*

The rail line extends between Milepost 73.60 at Landing Junction and Milepost 85.66 at Humboldt Junction, MI and between Milepost 85.66 at Humboldt Junction and Milepost 87.56 at Humboldt.

(4) *The total route miles being acquired;*

A total of 13.96 route miles is being acquired.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and*

The required maps are attached as Appendices 1 and 2.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify them as Class III rail carriers.*

The required certification is attached to this notice as Appendix 4.

VERIFICATION

A verification of Clinton Jones is attached as Appendix 5.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

The proposed acquisition and operation does not require environmental or historic reporting or assessment. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR CONSIDERATIONS

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.34 is attached as Appendix 6.

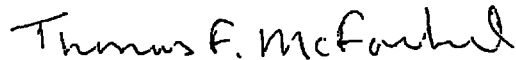
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days of the filing of this Notice, the Director of the Office of Proceedings should publish a notice in the *Federal Register* of the filing of this Notice. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,

MINERAL RANGE INC
P.O. Box 577
Hancock, MI 49930

Applicant-Petitioner

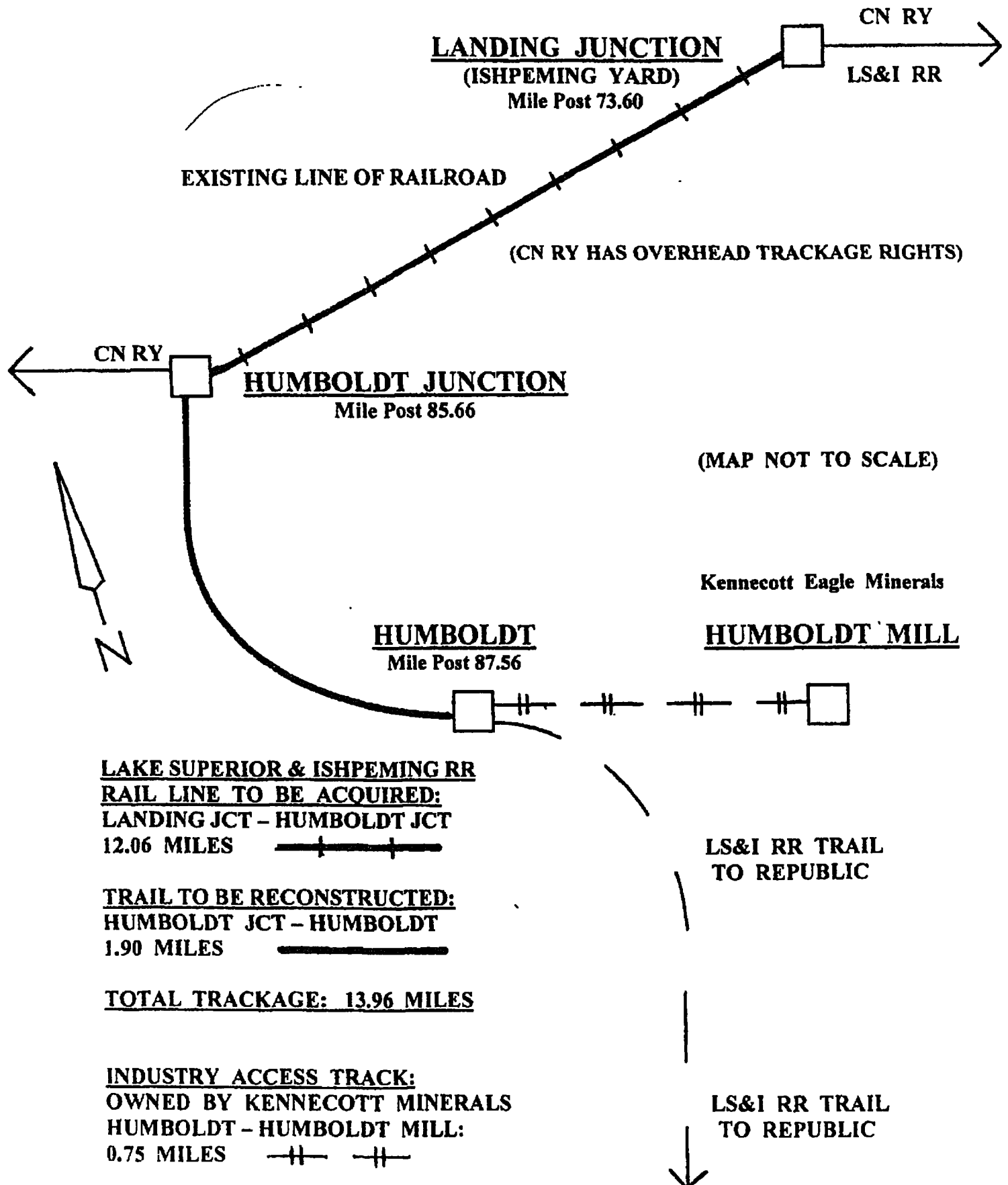


By: THOMAS F. McFARLAND
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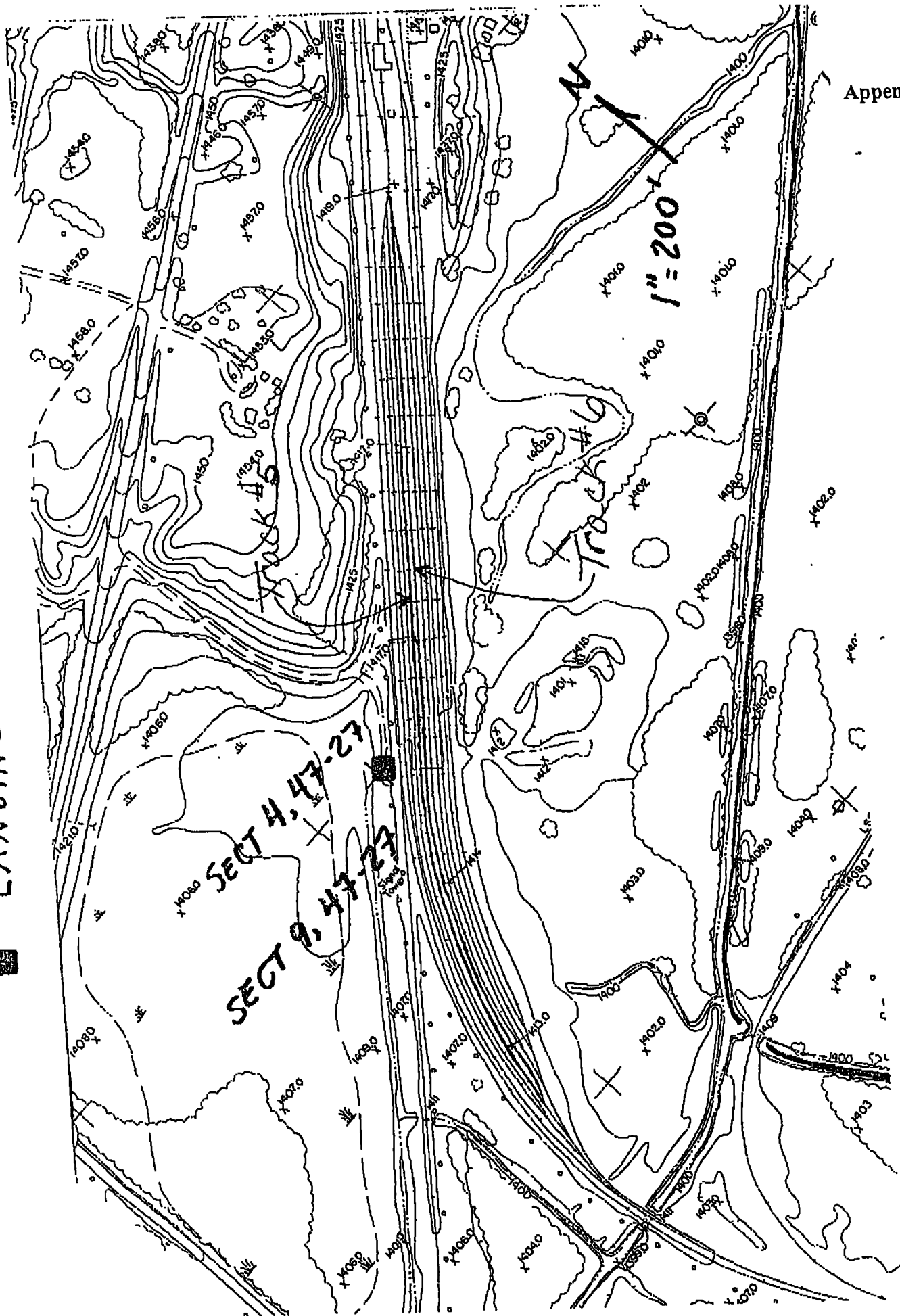
Attorney for Applicant-Petitioner

DATE FILED: October 25, 2011

**TO BE ACQUIRED OR RECONSTRUCTED BY APPLICANT
BETWEEN LANDING JUNCTION (ISHPEMING) AND HUMBOLDT, MI**



LANDING JCT



ISHPEMING YARD



JONESKELLER.COM
FOR ETTT...

EDWARD T. LYONS, JR.
ATTORNEY AT LAW

ELYONS@JONESKELLER.COM

December 19, 2005

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Docket No. AB-68 (Sub-No. 4X); *Lake Superior & Ishpeming Railroad Company*
– *Abandonment Exemption* – in *Marquette County, MI*

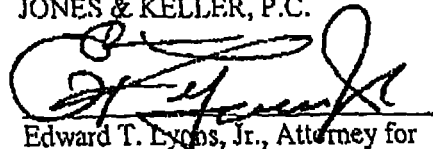
Dear Secretary Williams:

This is to advise that the Lake Superior & Ishpeming Railroad Company ("LS&I") has concluded a trail use agreement with the Michigan Department of Natural Resources pursuant to the Notice of Interim Trail Use entered in this proceeding on January 19, 2005, the National Trails System Act, 16 U.S.C. §1247(d), and applicable regulations at 49 CFR §1152.29 covering Segment Three of the LS&I's Republic Subdivision, extending from Humboldt Jct. (Milepost 85.6) south approximately 8.9 miles to the end of the line at Republic Mine (Milepost 94.5), in Marquette County, Michigan.

The trail use agreement is now in full force and effect, effective December 14, 2005.

Respectfully Submitted,

JONES & KELLER, P.C.



Edward T. Lyons, Jr., Attorney for
Lake Superior & Ishpeming Railroad
Company

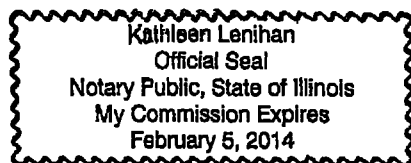
ETI/md

cc: Roger E. Storm, Michigan Department of Natural Resources
James J. Scullion, Lake Superior & Ishpeming Railroad Company
George W. Hawk, Esq., General Counsel & Secretary, Cleveland-Cliffs, Inc.

CERTIFICATION

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

THOMAS F. McFARLAND, certifies that the projected revenues as a result of the proposed acquisition and operation will not result in the creation of a Class II or Class I rail carrier.



Thomas F. McFarland
THOMAS F. McFARLAND

SUBSCRIBED and SWORN to
before me this 24th day of
October, 2011.

Kathleen Lenihan
Notary Public

My Commission Expires: 2/5/2014

VERIFICATION

STATE OF MICHIGAN)
) SS:
COUNTY OF HOUGHTON)

CLINTON JONES, JR., being duly sworn on oath, states that he is the President of Mineral Range, Inc.; that he has read the foregoing notice, that he knows the contents thereof, and that the facts therein stated are true and correct.

Clinton Jones, Jr.
Clinton Jones, Jr.

SUBSCRIBED and SWORN to
before me this 24th day of
~~September~~, 2011.

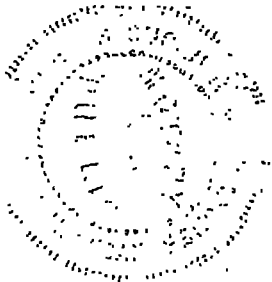
October

Susan R. Schumacher
Notary Public

Susan R. Schumacher

My Commission Expires: 09/27/16

Houghton County, Michigan
Acting in Houghton County



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 35560

*Mineral Range Inc -- Acquisition and Operation Exemption -- Rail Line
of Lake Superior & Ishpeming Railroad Company between Landing
Junction and Humboldt Junction, and Reinstitution of Rail Service
over Railbanked Right-of-Way between Humboldt Junction
and Humboldt, in Marquette County, MI*

STB Docket No. AB-68 (Sub-No. 4X)

*Lake Superior & Ishpeming Railroad Company
-- Abandonment Exemption --
in Marquette County, MI*

Mineral Range Inc (MRI), a noncarrier, has filed a Notice of Exemption to acquire from Lake Superior & Ishpeming Railroad Company (LSI) and to operate a rail line between Milepost 73.60 at Landing Junction and Milepost 85.66 at Humboldt Junction, a distance of 12.06 miles, and to reinstitute rail service over a railbanked right-of-way between Milepost 85.66 at Humboldt Junction and Milepost No. 87.56 at Humboldt, a distance of 1.90 miles, all in Marquette County, MI. The transaction includes acquisition and operation of Yard Track Nos. 5 and 6 having lengths of 2,278 feet and 2,345 feet, respectively, and incidental trackage rights of approximately 2,500 feet over a rail line jointly owned by LSI and Canadian National Railway Company (CN) between Landing Junction and Yard Track Nos. 5 and 6 to provide access to those Yard Tracks. CN has trackage rights over the Landing Junction-Humboldt Junction rail line identified above. MRI has committed to honor those CN trackage rights.

MRI's Notice of Exemption is related to a Petition for Partial Vacation of NITU filed simultaneously by MRI whereby a NITU granted to the Michigan Department of Natural Resources (MDNR) in Docket No. AB-68 (Sub-No. 4X), *Lake Superior & Ishpeming Railroad Company -- Aband. Exempt. -- in Marquette County, MI*, in decisions served January 19, 2005, August 23, 2005, and November 23, 2005, is requested to be partially vacated in order to permit rail service to be reinstituted between Milepost 85.66 at Humboldt Junction and Milepost 87.56 at Humboldt, MI, a distance of 1.90 miles.

The above rail lines to be acquired and operated total approximately 13.96 miles.

Comments must be filed with the Board and served on MRI's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, 312-236-0204.

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*. The filing of a petition to revoke will not automatically stay the transaction.

By the Board