

243715

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

ENTERED
Office of Proceedings
June 5, 2017
Part of
Public Record

June 5, 2017

BY HAND DELIVERY

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

*Re: Docket No. AB 1009 (Sub-No. 1X), Mission Mountain Railroad, L.L.C. –
Discontinuance of Service Exemption – in Flathead County, Montana*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of Mission Mountain Railroad's Petition for Exemption under 49 U.S.C. § 10502. Also enclosed is a check covering the \$6,900 filing fee.

If you have any questions, please call me.

Sincerely,

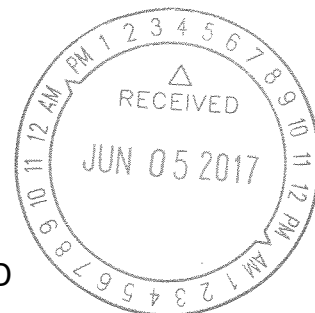


Karl Morell

Enclosures

FILED
June 5, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 5, 2017
SURFACE
TRANSPORTATION BOARD

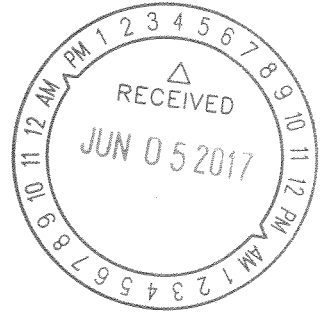


BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (Sub-No. 1X)

MISSION MOUNTAIN RAILROAD, L.L.C.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN FLATHEAD COUNTY, MONTANA

PETITION FOR EXEMPTION



Karl Morell
Karl Morell & Associates
440 1st Street, N.W.
Suite 440
Washington, D.C. 20001
(202) 595-9045

Attorney for:
MISSION MOUNTAIN
RAILROAD, L.L.C.

Dated: June 5, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (Sub-No. 1X)

MISSION MOUNTAIN RAILROAD, L.L.C.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN FLATHEAD COUNTY, MONTANA

PETITION FOR EXEMPTION

Mission Mountain Railroad, L.L.C. ("MMT") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, MMT's discontinuance of its lease operations over approximately 2.7 miles of rail line owned by BNSF Railway Company ("BNSF") in Flathead County, Montana.

PROPOSED TRANSACTION

MMT proposes to discontinue its operations over the 2.7-mile rail line leased from BNSF and located: (1) from Milepost 1225.19 to Milepost 1227.58; and (2) from Milepost 1226.91 to Engineering Station 189+36 (Milepost 1227.10), in Kalispell, Montana (the "Line"). The Line traverse U.S. Postal Service Zip Code 59901. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line does not contain federally granted rights-of-way. Any documentation in MMT's possession will be made available to those requesting it. BNSF is seeking to abandon the Line in AB 6 (Sub-No. 495X), *BNSF Railway Company – Abandonment Exemption – In Flathead County, Montana*.

STATEMENT OF FACTS

In STB Finance Docket No. 34634, *Mission Mountain Railroad, Inc. – Acquisition and Lease Exemption – The Burlington Northern And Santa Fe Railway Company* (not printed), served January 19, 2005, MMT was, among other things, authorized to lease a rail line located between Milepost 1211.86, near Columbia Falls, and Milepost 1227.58, in Kalispell, which includes the Line.

In December 2004, MMT commenced operations over the Line. Since that time, MMT has provided local service to two customers located on the Line. The two customers on the Line, Northwest Drywall & Building Supply and CHS Inc., do not oppose the abandonment of the Line by BNSF or the discontinuance of service by MMT since they will be relocated to Glacier Rail Park. *See* Exhibits B and C.

EXEMPTION REQUESTED

MMT seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for MMT to discontinue service over the Line.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

- (1) 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. 49 U.S.C. § 10502(a)

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy.

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X),

Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA (not printed), served September 17, 1997 (“*Georgia Central*”); STB Docket No. AB-6 (Sub-No. 409X), *The Burlington Northern and Santa Fe Ry. Co. – Abandonment Exemption – In Jefferson, Thayer and Nuckolls Counties, NE* (not printed), served July 23, 2004. By discontinuing MMT’s service over the Line, the overall operating efficiencies of MMT will improve in the area. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Also, the proposed discontinuance will promote a safe and efficient rail system. [49 U.S.C. § 10101(3)]. In addition, granting the requested exemption will provide for the expeditious handling and resolution of proceedings before the Board. [49 U.S.C. § 10101(15)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since all of the local shippers on the Line will continue to receive rail service from MMT at Glacier Rail Park.

Where, as here, local service is not affected, the Board and its predecessor have consistently found that formal regulation of a proposed discontinuance is not necessary to carry out the rail transportation policy. *See, e.g.*, Docket No. AB-102 (Sub-No. 25X), *Missouri-Kansas-Texas R. Co. – Exemption – Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS* (not printed), served February 9, 1990. As the Board’s predecessor noted: “We have long recognized that operating arrangements designed by carriers to promote more efficient

or economical operations promote the national [rail] transportation policy and should be encouraged.” Finance Docket No. 30703, *Soo Line R. Co. – Joint Use of Lines – Chesapeake and Ohio Ry. Co.* (not printed), served August 22, 1986, slip op. at 9.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is of limited scope. MMT seeks to discontinue lease operations over approximately 2.7 miles of rail line. The length of the track involved in a proposed discontinuance is not dispositive of whether the transaction or service is limited in scope. Docket No. AB-6 (Sub-No. 347), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctow, Washington and Mobile Counties, AL* (not printed), served July 6, 1993 (“BN Discontinuance”) (length of line not necessarily dispositive).

Of greater relevance to the “limited scope” issue is the number of shippers, if any, that would be adversely affected by the proposed discontinuance. *See, e.g.*, *BN Discontinuance* (discontinuance limited in scope where traffic would be handled under a haulage arrangement); Docket No. AB-290 (Sub-No. 2X), *Southern Ry. Co. – Discontinuance of Trackage Rights Operations Between Greenwood and Piedmont, South Carolina* (not printed), served June 20,

1990 (transaction found to be limited in scope because shippers would be served by a new carrier).

As previously noted, there are only two active rail shippers located on the Line. Because the two shippers will continue to be served at a nearby location, neither shipper will lose service or otherwise be adversely affected by MMT's discontinuance of operations. Because the proposed discontinuance will not adversely affect rail service to any shipper, the proposed discontinuance should be found limited in scope.

C. This Transaction Will Not Result In An Abuse of Market Power

There are two shippers located on the Line. Neither shipper will lose rail service or experience a reduction in the number of carriers authorized to provide them with rail service. Both of the local shippers will continue to receive rail service from MMT and BNSF will continue to have an underlying common carrier obligation to provide rail service in the event MMT fails to do so. Consequently, the proposed discontinuance will not reduce the number of rail options available to the two shippers. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576), *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*. The proposed discontinuance will simply result in the relocation of where the two shippers will receive service. *See* STB Docket No. AB-566X, *Gateway Western R. Co. – Discontinuance of Service Exemption – In Jackson County, MO* (not printed), served July 21, 2000, slip op. at 2 (“Because service is being continued, regulation is not necessary to protect shippers from the abuse of market power.”). The new service arrangement will preserve service

and maintain the efficiencies of the movements without any adverse competitive consequences. *See, e.g.,* Docket No. AB-6 (Sub-No. 340X), *Burlington Northern R. Co. – Discontinuance of Trackage Rights Exemption – Between East Dubuque, IL and Dubuque, IA* (not printed), served September 1, 1992 (regulation not necessary to protect shippers from abuse of market power where service would continue under car haulage agreement).

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

The Environmental Report containing information required by 49 C.F.R. § 1105.7(e) was prepared by BNSF and filed with the Board on March 8, 2017 in Docket No. AB 6 (Sub-No. 495X).

The Historic Report containing information required by 49 C.F.R. § 1105.8(d) was also prepared by BNSF was filed with the Board on March 8, 2017 in Docket No. AB-6 (Sub-No. 495X).

In any event, environmental and historic reporting requirements are not required in discontinuance proceedings. *See* AB 271X, *Everett Railroad Company – Discontinuance of Service Exemption* (not printed), served November 16, 2007.

Respectfully submitted,



Karl Morell
Karl Morell & Associates
440 1st Street, N.W.
Suite 440
Washington, D.C. 20001
(202) 595-9045

Attorney for:
MISSION MOUNTAIN
RAILROAD, L.L.C.

Dated: June 5, 2017

Kalispell, MT Abandonment Map

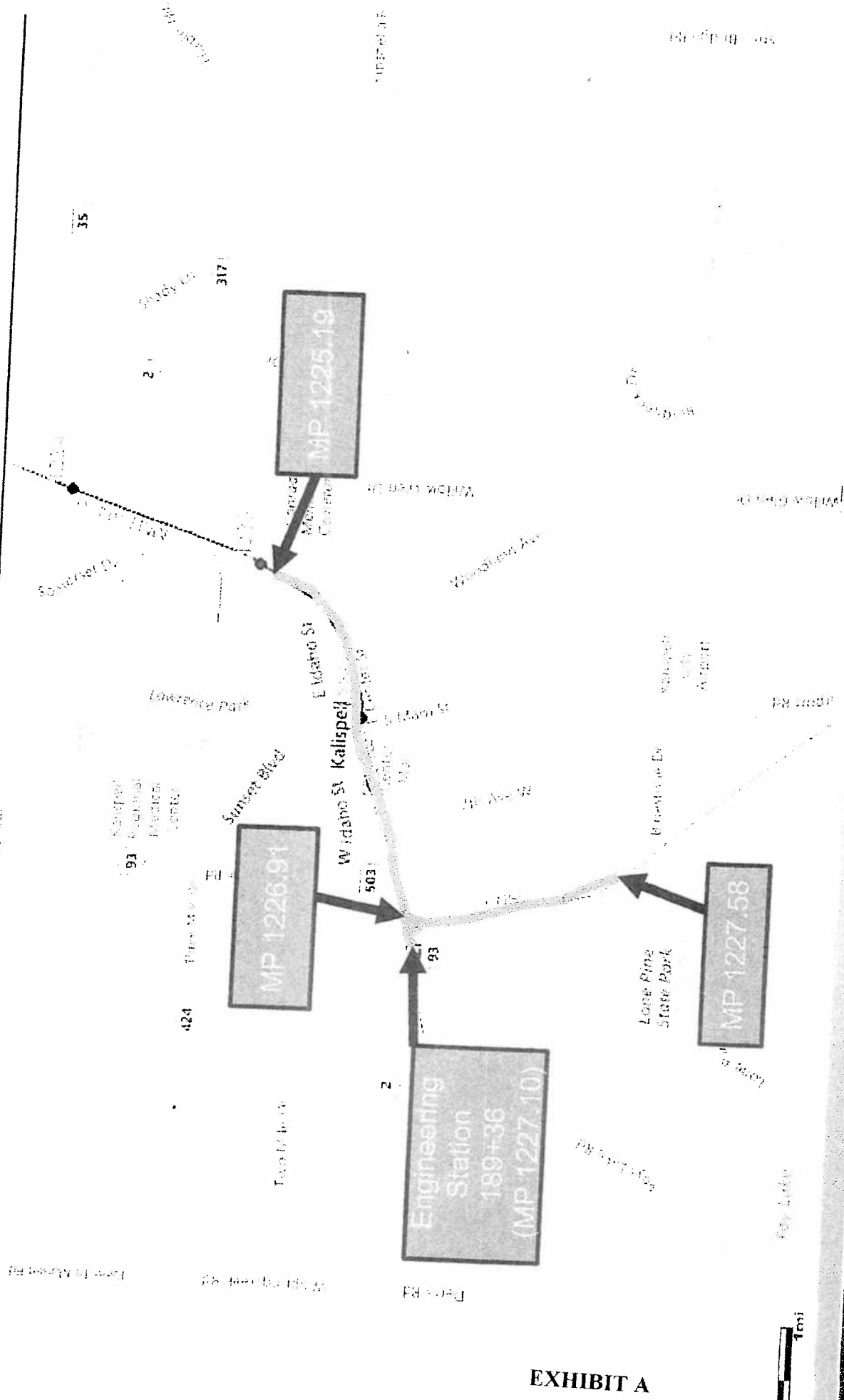


EXHIBIT A

NORTHWEST DRYWALL & BUILDING

160 3rd Avenue W.N. • PO Box 7817 • Kalispell, Montana 59904
(406) 752-2644 • FAX (406) 756-5959
nw-drywall.com

March 24, 2017

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

Re: BNSF Abandonment of Rail Line in City of Kalispell

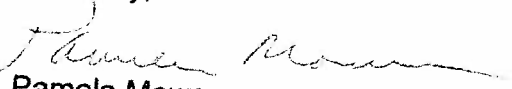
Dear Ms. Brown,

On behalf of Northwest Drywall, I submit this letter in support of the BNSF Petition for Exemption to abandon the line of railroad extending from Milepost 1225.19 on the north end of the city of Kalispell, Montana, to Milepost 1227.58 to the south and Milepost 1227.10 to the west.

Northwest Drywall has long operated on the rail line in the area recommended for abandonment and has recently successfully negotiated with the City of Kalispell and Flathead County Economic Development Authority (FCEDA) to relocate our business into a new facility to be built in the new rail park owned by FCEDA. The relocation of our business to this new site just north of Kalispell will allow for safer train service and termination of the tracks outside of the busy core area of the city. We understand that the tracks would not be removed until such time as our business is relocated and reopened at the new rail park so that our rail service will not be interrupted.

Please approve the abandonment of this section of track described above and in accordance with the BNSF request.

Sincerely,



Pamela Mower
Secretary
Northwest Drywall

Customer Service is Our Specialty



P.O. Box 579
150 1st Avenue WN
Kalispell, MT
59903
406-755-7400
Fax 406-755-7478

April 20, 2017

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

Re: BNSF Abandonment of Rail Line in City of Kalispell

Dear Ms. Brown,

On behalf of CHS Inc., I submit this letter of conditional support for BNSF's Petition for Exemption to abandon the line of railroad extending from Milepost 1225.19 on the north end of the City of Kalispell, Montana, to Milepost 1227.58 to the south and Milepost 1227.10 to the west, to meet the requirements of the City's TIGER grant.

CHS and our CHS Mountain West Coop service center in Kalispell agree with abandonment on the condition that the City and the Flathead County Economic Development Authority (FCEDA) provide the funding required to move us to a new location. Although the City and FCEDA have indicated that they will provide relocation funding for CHS based on the previous construction cost estimates, construction costs have risen sharply during the Federal Railroad Administration's lengthy TIGER grant approval process. Final construction costs will not be known until the end of June. Due to this situation, we ask that the STB defer its final abandonment decision on BNSF's petition until after final construction costs are known and CHS executes definitive agreements enabling the relocation. CHS expects to execute such agreements by June 30, 2017. At that time CHS will be able to give an unconditional statement on the abandonment of the track.

CHS is the current name of a long line of farmer's cooperatives that have utilized railroad tracks in Kalispell since before Kalispell was a city. This strong historic presence in Kalispell is indicative of the agricultural roots of the community and we continue to serve farmers in this valley and surrounding area. Moving out of down town Kalispell will better serve our customers and the residents of Kalispell. CHS has been planning for its relocation to the new rail park on the northern edge of Kalispell with our partners, the City of Kalispell and the FCEDA, for a number of years. The relocation of our business to this new site will allow for reduced interactions between grain and fertilizer trucks and resident or tourist vehicles, particularly during the height of harvest and planting season. We understand that the



P.O. Box 579
150 1st Avenue WN
Kalispell, MT
59903
406-755-7400
Fax 406-755-7478

tracks would not be removed until such time as our business is relocated and reopened at the new rail park. Thus, our rail service will not be interrupted as part of this process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark D. Lalum".

Mark D Lalum
Assistant General Manager
Mountain West Coop
Kalispell, Montana

Cc:

Katharine Thompson, City of Kalispell
Naomi Moore, Senior Legal Counsel CHS
Dan Mack, Vice President Transportation and Terminal Operations CHS
Brock Lautenschlager, Rail Services Director CHS
David Cobb, Federal Affairs CHS
Chuck Thompson, General Manager Mountain West Coop
Tim Miller, Vice President Mountain Region CHS



City of Kalispell
OFFICE OF THE CITY MANAGER
201 First Avenue East
Kalispell, MT 59903

April 4, 2017

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

Re: BNSF Abandonment of Rail Line in City of Kalispell

Dear Ms. Brown,

On behalf of the City of Kalispell, please accept this letter in full support of the BNSF's Petition for Exemption to abandon a line of railroad extending from Milepost 1225.19 on the north end of the city to Milepost 1227.58 to the south and Milepost 1227.10 to the west end. The City of Kalispell's City Council requested that BNSF take this action in Resolution #5799 passed unanimously on January 17, 2017.

The City of Kalispell was awarded a TIGER grant from the USDOT in October 2015 to build a new industrial rail park and track turnaround on the northern edge of the City allowing for the subsequent removal of nearly two miles of existing rail line to be replaced by a bike and pedestrian trail. This project is the outgrowth of an intensive multi-year public engagement process and relocation plans with two current rail users, CHS and Northwest Drywall. The rail abandonment and removal is intended to be complete following the relocation of these rail served businesses to the new rail park. This project has included substantial community planning, public involvement, business engagement, and public-private partnership for the betterment of the community stakeholders. We are very proud of this community's perseverance and hard work to achieve multiple community goals in this transformative project where Kalispell retains and expands its rail access at the same time that it reduces the negative impacts of the old line that bifurcates the city.

This request for rail abandonment is part of Kalispell's USDOT TIGER grant project. As such, timely approval of the abandonment is critical. The Federal Rail Administration is working with the City of Kalispell to complete the obligation of grant funds in advance of the September 30, 2017, deadline. That being said, it is of great import that the Surface Transportation Board review this request at its earliest convenience.

We encourage the Surface Transportation Board to act in support of our request to abandon this section of railroad track in an expeditious manner.

Sincerely,

Doug Russell
City Manager

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.50(d)(1), the undersigned hereby certifies that notice of the proposed discontinuance of lease operations in Docket No. AB 1009 (Sub No. 1X) was mailed via first class mail on June 5, 2017 to the following parties:

State Public Service Commission

State of Montana
Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

Military Traffic Management Command

MTMCTEA
ATTN: Railroads for National Defense
1 Soldier Way, Building 1900W
Scott AFB, Illinois 62225-5006

National Park Service

U.S. Department of Interior - National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of Agriculture

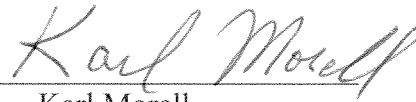
U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, S.W.
Washington, DC 20250

Shippers

Northwest Drywall & Building Supply
160 8th Avenue WN
Kalispell, Montana 59904

CHS Inc.
150 1st Ave WN
Kalispell, Montana 59903

Dated: June 5, 2017

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance of lease operations in Docket No. AB 1009 (Sub-No. 1X) was published on March 28, 2017 in the Daily Inter Lake, a newspaper of general circulation in Flathead County, Montana as required by 49 C.F.R. § 1105.12.

Dated: June 5, 2017

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1009 (Sub-No. 1X)

MISSION MOUNTAIN RAILROAD, L.L.C.
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN FLATHEAD COUNTY, MONTANA

On June 5, 2017, Mission Mountain Railroad, L.L.C. ("MMT") filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for MMT to discontinue service over approximately 2.7 miles of track from (1) Milepost 1225.19 to Milepost 1227.58; and (2) Milepost 1226.91 to Engineering Station 189+36 (Milepost 1227.10) in Kalispell, Flathead County, Montana (the "Line"). The Line traverses U.S. Postal Service Zip Code 59901.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by _____, 2017).

Any offer of financial assistance for continued rail service under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,700. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 1009 (Sub-No. 1X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface

Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Karl Morell, 440 1st Street, N.W., Suite 440, Washington D.C 20001.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

Decided: _____ 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings