

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35286

ASARCO INCORPORATED AND AMERICAS MINING CORPORATION—
PETITION FOR DECLARATORY ORDER

Decided: August 21, 2009

On August 7, 2009, ASARCO Incorporated and Americas Mining Corporation jointly filed a petition seeking a declaratory order. The petitioners ask that the Board find that it has jurisdiction over the proposed acquisition and operation of the Copper Basin Railway (CBRY)¹ by Sterlite (USA), Inc. (Sterlite). According to the petitioners, Sterlite is attempting to avoid the Board's scrutiny by purchasing the CBRY within the context of a larger asset purchase, now pending with the United States Bankruptcy Court.² On August 11, 2009, Sterlite filed a reply in opposition.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Boston & Maine Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Authority—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989).

A proceeding will not be instituted. Sterlite in its reply acknowledges that, as a noncarrier, its proposed acquisition of CBRY's assets is subject to Board approval under 49 U.S.C. 10901(a). Accordingly, there is no controversy here because all parties agree that the acquisition and operation of the line is subject to this agency's jurisdiction. Indeed, Sterlite has invoked this agency's rules at 49 CFR 1105.31 to acquire and operate the lines of the Copper Basin Railway. See Sterlite (USA), Inc.—Acquisition and Operation Exemption—Copper Basin Railway, Inc., STB Finance Docket No. 35291, notice filed August 14, 2009.

¹ The petitioners state that CBRY's main line runs from Magma to Winkelman, AZ, a distance of 54 miles; that a branch line runs 7 miles, from Ray Junction to Ray, AZ; and that the CBRY connects with the San Manuel Arizona Railroad at Hayden, AZ, and handles that railroad's traffic from Hayden to interchange with the Union Pacific Railroad Company's main line track at Magma, AZ.

² See In re ASARCO LLC, et al., Case No. 05-21207 (Bankr. S.D. Tex.).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' request for a declaratory order proceeding is denied.
2. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary