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15 Sept. 2003

ENTERED
Office of Proceedings

SEP 16 2003

Part of
Public Record

Hon. Vernon Williams
Secretary
Surface Transportation Board
1920 K Street, N.W.
Washington, D.C. 20423--0001

Re: BG & CM Railroad -- exemption --
Camas Prairie Railnet, F.D. 34398

Dear Mr. Williams:

Enclosed for filing in F.D. 34398 an original and ten (10) copies of a Notice of Exemption, and an original and ten (10) copies of a motion to dismiss, on behalf of BG & CM Railroad.

I am also enclosing 11 additional copies for filing in F.D. 34399, a related docket. I believe it would be prudent to file the additional copies in 34399 so that, in the event different STB personnel are handling the two dockets, they are generally aware of the relationship between F.D. 34399 and F.D. 34398.

Please find enclosed as well a stamped self-addressed envelope and an extra copy of the Notice and Motion to Dismiss. I would appreciate return of these to me after date-stamping of the Notice and Motion so that I may verify receipt.

Finally, I enclose a check from Michael Williams in the amount of \$1300 for the filing fee for the Notice in F.D. 34398.

Thank you for your assistance in this matter.

Very truly,

Charles H. Montange
for BG & CM Railroad

encls (two sets of documents, sase, check)

cc. service list attached Motion (w/2 encls)
(both Notice and Motion)
Michael Williams (w/2 encls.)

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Office of Proceedings

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BEFORE THE SURFACE TRANSPORTATION BOARD

BG & CM Railroad
- acquisition and operation exemption--
Camas Prairie Railnet, Inc.

Finance Docket 34398



BG & CM Railroad hereby gives notice, pursuant to 49 C.F.R. § 1150.31, et seq, of a notice of exemption to acquire and to operate Camas Prairie Railnet, Inc.'s line between Spalding and Grangeville in Lewis, Nez Perce and Idaho Counties, Idaho.

The line in question has previously been authorized for abandonment in Camas Prairie Railnet, Inc. -- Abandonment, AB 564, served Sept. 13, 2000. The line was initially authorized for railbanking (regulation under 16 U.S.C. § 1247(d) for interim trail use and future rail reactivation) in the same decision. Pursuant to a decision in the same docket on January 6, 2003, BG & CM Railroad was authorized to acquire the line and to become interim trail manager for the line under 16 U.S.C. § 1247(d). Camas Prairie RailNet, Inc. subsequently contracted to transfer and did transfer to BG & CM Railroad all assets in the line necessary to operate a railroad on the line, and all its rights to operate/reactivate service. Camas Prairie RailNet, Inc. earlier discontinued rail service on the line.

BG & CM Railroad wishes to provide contract rail service, rather than common carrier rail service, on MP 0.0 to MP 52.0 of the line, to serve two grain elevators, primarily during the autumn grain rush. BG & CM Railroad is not in a position to assume the risks of common carrier service; it cannot obtain

bank financing to offer rail service absent an exemption from common carrier obligations and 49 U.S.C. § 10903 pre-authorization of abandonment requirements. On or about September 9, 2003, BG & CM Railroad filed a Petition for Exemption (Finance Docket 34399) seeking an exemption from common carrier obligations and 49 U.S.C. § 10903. BG & CM Railroad has sought expedited consideration of that Petition.

Camas Prairie RailNet, Inc., and BG & CM Railroad believe that the CITU issued in Camas Prairie Railnet, Inc.-- Abandonment, AB 564, under which BG & CM Railroad acquired the line is all the authority necessary for BG & CM Railroad also to acquire Camas Prairie RailNet's right to reactivate service on the line. In that event, no further authority is required from the STB for BG & CM Railroad to provide service on the line, should this Board grant BG & CM Railroad's Petition for Exemption pending in F.D. 34399.

However, should this Board take a differing view, BG & CM Railroad by this Notice of Exemption seeks such additional regulatory authority as is necessary to acquire all Camas Prairie Railnet's regulatory rights to reactivate freight rail service in connection with the line (BG & CM Railroad already owns all Camas Prairie Railnet's property rights in that respect). BG & CM Railroad is contemporaneously filing a motion to dismiss this Notice if the Notice is unnecessary, as BG & CM Railroad and Camas Prairie RailNet, Inc. believe it is.

As required by 49 C.F.R. § 1150.33, BG & CM Railroad makes

the following representations:

(a) Full name and address of applicant: BG & CM Railroad, P.O. Box 612, Richmond, Missouri 64085.

(b) Representative of applicant who should receive correspondence: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

(c) Statement concerning status of agreement: BG & CM Railroad has acquired all relevant track, tie and other track materials, and sufficient real estate interests for railroad operation pursuant to this Board's prior orders pursuant to 16 U.S.C. § 1247(d). The transfer agreement also provided that BG & CM Railroad acquired the right to operate the line for railroad purposes. By this notice, BG & CM Railroad seeks only to obtain this Board's authorization (if further authorization is necessary) to acquire the regulatory right to reactivate freight rail service, if that right is still held in this Board's view by Camas Prairie RailNet. The agreement between BG & CM Railroad and Camas Prairie RailNet already has transferred from Camas Prairie Railnet to BG & CM Railroad all Camas Prairie's property rights to reactivate.

(d) Operator: BG & CM Railroad. BG & CM Railroad intends to reactivate service only if its Petition for Exemption in F.D. 34399 is granted.¹ The line is currently railbanked and Camas Prairie RailNet, Inc. has discontinued rail service.

¹ BG & CM Railroad's current plan is to contract for equipment and crews from Camas Prairie RailNet, Inc. until BG & CM Railroad obtains its own equipment and crews.

(e) Summary.

(1) Name and address of railroad transferring the subject property: Camas Prairie Railnet, Inc.

(2) The proposed time schedule for consummation of the transaction: Pursuant to the authorization in Camas Prairie Railnet, Inc. -- Abandonment, AB 564, BG & CM Railroad has already acquired the property necessary for rail service, including the right to reactivate service. BG & CM Railroad wishes to reactivate service immediately in order to serve the autumn grain rush. However, because BG & CM Railroad cannot obtain financing if it becomes a common carrier, BG & CM Railroad does not intend to provide any service (i) until and unless this Board issues an order, which becomes effective, granting the Petition for Exemption sought by BG & CM Railroad from certain abandonment and common carrier requirements in STB docket F.D. 34399, and (ii) any other relief which this Board deems necessary or appropriate to ensure that contract rail service can recommence on the line without triggering common carrier obligations or the need to seek pre-authorization of rail abandonment by either BG & CM Railroad or Camas Prairie Railnet, Inc. BG & CM Railroad (and potential shippers on the line) have sought expedited consideration with respect to the Petition for Exemption in F.D. 34399, and have also requested the authority granted in response to the petition be immediately effective, in order to permit BG & CM Railroad to provide rail service during this fall's grain season. BG & CM Railroad and

Camas Prairie filed a letter relating to interim service on or about September 5, 2003, in STB docket AB-564. However, on further reflection, neither railroad is currently prepared to provide any service until this Board acts on the Petition for Exemption in F.D. 34399.²

(3) Mileposts of the subject property: MP 0.0 to end of line at MP 66.8.

(4) Total route miles: 66.8.

(f) Map. See Exhibit A.

(g) Certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier. See Exhibit B.

Compliance with 49 C.F.R. § 1150.34 (caption summary). See Exhibit C.

Compliance with 49 C.F.R. § 1150.32(e). Inasmuch as expected revenue is projected to be substantially under \$5 million, no further compliance with the notice requirements of § 1150.32(e) is required.

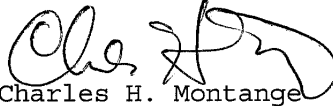
Comment and request for clarification concerning 49 C.F.R. § 1150.32(d) (requirement that applicant preserve intact all sites and structures more than 50 years old). The line in question in this proceeding has been authorized for abandonment and railbanking, and in this process, Camas Prairie Railnet, Inc., has complied with all requirements imposed by this Board

² BG & CM Railroad seeks to reactivate rail service only to MP 52.0. MP 52.0 to MP 66.8 should remain railbanked, even if the Petition for Exemption is otherwise granted.

to implement section 106 of the National Historic Preservation Act, 16 U.S.C. 470, in accordance with this Board's decision in Camas Prairie Railnet -- Abandonment, AB 564, served September 6, 2002 (copy attached as Exhibit D). BG & CM Railroad believes it consistent with the intent of 49 C.F.R. § 1150.32(d) in the context of a notice of exemption to acquire residual rights to reactivate that the Board clarify that BG & CM Railroad is not thereby obligated to cease alteration of structures and sites more than 50 years old where such alteration has already been authorized pursuant to an abandonment proceeding. BG & CM Railroad accordingly requests that this Board note that the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, have been met as to this line to the extent provided in this Board's decision in Camas Prairie Railnet -- Abandonment, AB 564, served September 6, 2002, and that BG & CM Railroad may take actions consistent with that decision.

Verification. See Exhibit E.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
for BG & CM Railroad, Inc.

Att(s): Exhibit A -- Map
Exhibit B -- Revenue Certificate
Exhibit C -- Caption Summary
Exhibit D -- Camas Prairie decision served 8/6/02
Exhibit E -- Verification

Exhibit A

Map

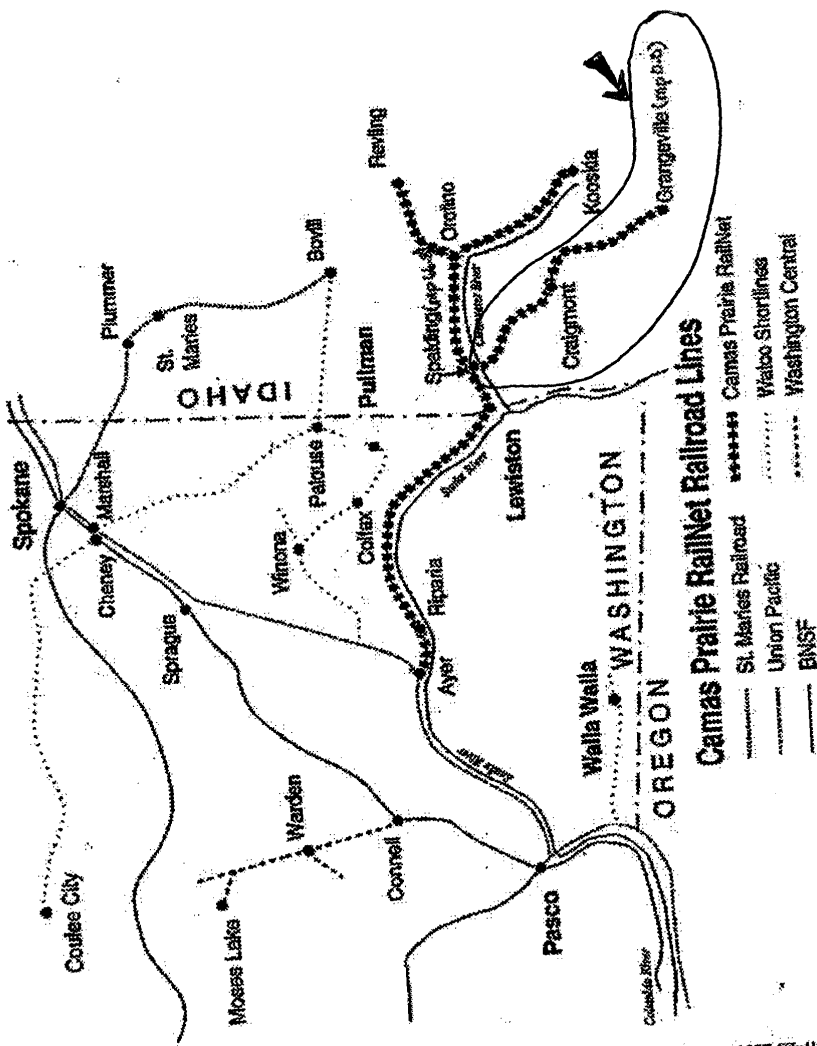


Exhibit B

Revenue Certification

I, Michael Williams, president of BG & CM Railroad, hereby certify that expected annual revenues from this line will be well below the revenue limitations for a Class III railroad and are expected to be less than \$1 million per year.

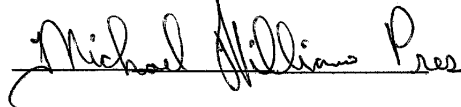
 Michael Williams Pres

Exhibit C
Caption Summary
pursuant to
49 C.F.R. § 1150.34

BEFORE THE SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION

BG & CM Railroad
-- acquisition and operation exemption--
Camas Prairie Railnet, Inc.

F.D. 34398

BG & CM Railroad has filed a notice of exemption to acquire and to operate Camas Prairie Railnet, Inc.'s line between Spalding and Grangeville in Lewis, Nez Perce and Idaho Counties, Idaho.³ Comments must be filed with the Board and served on BG & CM Railroad's representative: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177, telephone (206) 546-1936; fax (206) 546-3739. This notice is associated with a Petition for Exemption (F.D. 34399) pursuant to 49 U.S.C. § 10502 to exempt BG & CM Railroad from certain requirements relating to

³ The line in question has previously been authorized for abandonment in Camas Prairie Railnet, Inc. -- Abandonment, AB 564, served Sept. 13, 2000. The line was authorized for railbanking in the same decision. Pursuant to a decision in the same docket on January 6, 2003, BG & CM Railroad became interim trail manager for the line. By this Notice of Exemption, BG & CM Railroad to the extent necessary seeks regulatory authority to acquire all Camas Prairie Railnet's right to reactivate rail service in connection with the line. BG & CM Railroad and Camas Prairie RailNet, Inc. take the position that no further action by this Board is necessary to permit such transfer in light of the decision in AB 564 served January 6, 2003. BG & CM Railroad has accordingly filed a motion to dismiss this Notice of Exemption, contemporaneous with the Notice.

abandonment and common carrier obligations in the event BG & CM Railroad acquires Camas Prairie Railnet's residual common carrier obligations pursuant to this notice.

The notice is filed under § 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Exhibit D

Camas Prairie decision served 8/6/02

33003
DO

SERVICE DATE - SEPTEMBER 6, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-564

CAMAS PRAIRIE RAILNET, INC.-ABANDONMENT-IN LEWIS, NEZ PERCE, AND IDAHO
COUNTIES, ID
(BETWEEN SPALDING AND GRANGEVILLE, ID)

Decided: September 5, 2002

By decision and certificate of interim trail use or abandonment served on September 13, 2000 (September decision), Camas Prairie RailNet, Inc. (CSPR or applicant) was granted authority under 49 U.S.C. 10903 to abandon a line of railroad known as the Grangeville Line, or Second Subdivision, extending from milepost 0.00 near Spalding, ID, to milepost 66.8 (end of track) near Grangeville, ID, a distance of 66.8 miles, in Lewis, Nez Perce, and Idaho Counties, ID. The abandonment was made subject to employee protective, public use,¹ historic, and environmental conditions.

The environmental conditions were as follows: CSPR (1) shall not salvage or dispose of the right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) shall notify the National Geodetic Survey (NGS) not less than 90 days prior to commencement of salvage operations, if such operations are expected to destroy or disturb any of the 23 geodetic station markers listed in CSPR's Environmental Report; (3) shall retain its interest in and take no steps to alter the historic integrity of the rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (4) shall consult with the City of Cottonwood's Highway Engineer prior to conducting salvage activities at or near grade crossings; (5) shall consult with the Environmental Protection Agency (EPA) and secure all necessary permits prior to initiation of salvage or disposal activities; (6)(a) shall consult with the Idaho Department of Environmental Quality (ID-DEQ) and the Nez Perce Tribe regarding development of a Track Salvage and Stream Restoration Work Plan (Work Plan), submit the Work Plan to ID-DEQ and the Nez Perce for their review, design the Work Plan to protect stream habitats during any salvage activities to restore in-stream habitats, including the use of best management practices, and address in the Work Plan disposal of cross ties and timbers which may

¹ The public use condition expired on April 11, 2001.

have been treated with creosote or pentachlorophenol, both of which are considered toxic,² and (b) shall obtain from ID-DEQ all required discharge permits and plans to prevent hill/slope mass wasting prior to initiation of salvage or disposal activities; (7)(a) shall consult with the Bureau of Land Management (BLM) to eradicate all noxious or non-native weeds prior to abandonment, consult with BLM regarding the application of approved herbicides to all non-native weed infestations and the seeding and mulching of all disturbed areas with native vegetation, and maintain responsibility for weed control and successful revegetation program as long as the right-of-way remains under CSPR's ownership, (b) shall provide adequate certification to BLM that the right-of-way contains no hazardous substances that are subject to provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, and the Resource Conservation and Recovery Act of 1976, as amended, and (c) shall take reasonable measures to dismantle or seal all trestles, bridges, and tunnels in a manner that will make them inaccessible to the public, if the right-of-way is not converted to any other public use.

On August 22, 2002, the Board's Section of Environmental Analysis (SEA) sent the Board a Supplemental Post Environmental Assessment. Therein, SEA states that, based on subsequent consultations and work by CSPR, all or portions of all seven imposed environmental conditions have been satisfied. SEA further states that CSPR has also negotiated a separate agreement with the Nez Perce Tribe regarding implementation of potential stream restoration activities on Lapwai Creek.

SEA therefore recommends that we delete conditions 1, 3, 6(a), and 7(a), (b) and (c). Moreover, in light of the recent CSPR-Nez Perce agreement, SEA also recommends that we add the following condition: CSPR shall abide by the terms of its negotiated agreement with the Nez Perce Tribe governing stream restoration activities affecting Lapwai Creek and its tributaries.

Finally, SEA states that conditions 2, 4, 5, and 6(b) should remain in effect because they have yet to be satisfied. It notes, however, that those conditions are self-executing consultation conditions and that, once CSPR has completed them, it may proceed with salvage.

Accordingly, the proceeding will be reopened to implement SEA's recommendations as set forth in the ordering paragraphs below.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

² Condition 6(a) was modified in a decision served on July 24, 2002, by removing reference to ID-DEQ.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, environmental conditions 1, 3, 6(a), and 7(a), (b), and (c) are removed, and the following new condition is added: (8) CSPR shall abide by the terms of its negotiated agreement with the Nez Perce Tribe governing stream restoration activities affecting Lapwai Creek and its tributaries.
3. All other provisions and environmental conditions imposed in the September 13, 2000 decision in this proceeding will remain in effect.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

Exhibit E

Verification

I, Michael Williams, declare under penalty of perjury (a) that I am president of BG & CM Railroad, and (b) that the statements contained in the Notice of Exemption of which this Verification is a part are true and correct.

Michael Williams President

Executed on: September 11, 2003.