

220553

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LA SALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F MCFARLAND

October 26, 2007

By UPS overnight mail
(Monday delivery)

Vernon A Williams, Secretary
Surface Transportation Board
395 E Street, S W , Suite 1149
Washington, DC 20024

FILED
OCT 29 2007
SURFACE
TRANSPORTATION BOARD

Re Docket No AB-435 (Sub-No 2X), *Willamette Valley Railway Company --
Discontinuance of Service Exemption -- Mill City Branch of Union Pacific
Railroad Company*

Dear Mr Williams

Enclosed please find an original and 10 copies of Verified Notice of Exemption Under 49
C F R § 1152.50, for filing with the Board in the above referenced matter

Also enclosed is a check in the amount of \$3,200 for the filing fee

Very truly yours,

Tom McFarland

Thomas F McFarland
Attorney for Applicant

ENTERED
Office of Proceedings
OCT 29 2007
Part of
Public Record

TMF kl enc wp8 01253\lrsib1

FEE RECEIVED

OCT 29 2007

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



WILLAMETTE VALLEY RAILWAY)
COMPANY -- DISCONTINUANCE OF) DOCKET NO AB-435
SERVICE EXEMPTION -- MILL CITY) (SUB-NO 2X)
BRANCH OF UNION PACIFIC)
RAILROAD COMPANY)

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1152.50**

WILLAMETTE VALLEY RAILWAY COMPANY
P O Box 917
McMinnville, OR 97128

Applicant

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

DATE FILED October 29, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WILLAMETTE VALLEY RAILWAY	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO AB-435
SERVICE EXEMPTION -- MILL CITY	)	(SUB-NO 2X)
BRANCH OF UNION PACIFIC	)	
RAILROAD COMPANY	)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1152.50**

Pursuant to the class exemption for out-of-service rail lines published at 49 C F R § 1152 50, *et seq* , WILLAMETTE VALLEY RAILWAY COMPANY (WVR) hereby provides verified notice of its exemption from 49 U.S C § 10903 for its discontinuance of rail service over the Mill City Branch owned by Union Pacific Railroad Company (UP), i e , (1) from Milepost 689 64 at or near Page, Oregon to a mileage equation at Milepost 697 37, equivalent to Milepost 684 67, thence to Milepost 690 97 at or near Lebanon, Oregon, and (2) from Milepost 690 97 at or near Lebanon, Oregon to end of track at Milepost 725 71 at or near Mill City, Oregon, a total distance of approximately 48 77 miles in Linn County, Oregon ("Mill City Branch")

NATURE OF THE PROPOSED DISCONTINUANCE

In February, 1993, WVR leased the Mill City Branch and other rail lines in Oregon from UP's predecessor, Southern Pacific Transportation Company WVR operated the Mill City Branch until October, 2000, when the lease was amended to include Albany & Eastern Railroad Company (AERC) as a joint lessee with WVR At that time, it was agreed that AERC would

operate the Mill City Branch on an exclusive basis, and that WVR would operate the other rail lines in Oregon on an exclusive basis. The Mill City Branch has been operated exclusively by AERC from October, 2000 to date, and continuing. The lease is in the process of being amended to terminate WVR's joint lease of the Mill City Branch. This notice of exemption for discontinuance of WVR's rail service over the Mill City Branch is intended to formalize WVR's cessation of operations over that Branch that occurred seven years ago.^{1/}

WVR's discontinuance of rail service in the foregoing circumstances is essentially the same as a "(d)iscontinuance of trackage rights where the affected line will continue to be operated," for which it is provided, by virtue of 49 C.F.R. § 1105.6(c)(6), that "(n)o environmental documentation will normally be prepared." Whereas discontinuance of freight service normally requires an Environmental Assessment, there is a specific exception to that requirement for "discontinuances of trackage rights where the affected line will continue to be operated." See 49 C.F.R. § 1105.6(b)(3). Accordingly, an Environmental and Historic Report is not being filed as part of this Notice of Exemption.^{2/} In the event that the Board were to determine that the action proposed by WVR does not technically qualify for the "discontinued trackage rights-continue to be operated" exception to the requirement of environmental and historic reporting, the Board is respectfully requested in the circumstances to act under 49 C.F.R. § 1105.6(d) to reclassify or modify the requirement of such reporting in this individual

^{1/} This matter was brought to a head as a result of a recent change of ownership of AERC. The new owners of AERC and UP agreed that the lease and operating authority regarding the Mill City Branch should be amended to reflect the fact that WVR is not authorized to operate that Branch, and has not operated that Branch for seven years.

^{2/} A Historic Report is not required for an action if an Environmental Report is not required for that action. See 49 C.F.R. § 1105.8(a).

proceeding inasmuch as such reporting is not necessary where, as here, a rail carrier not having operated over a line for seven years discontinues its operating authority, but the rail line will continue to be operated by the rail carrier having operated over the line continuously for the past seven years

The following information is submitted in accordance with Board regulations

Proposed Consummation Date - 49 C.F.R. § 1152.50(d)(2)

The discontinuance is proposed to be consummated on or after December 18, 2007, which is the 50th day after the filing of this Notice of Exemption

Certification - 49 C.F.R. § 1152.50(b)

WVR certifies that it has not transported any local traffic over the line for at least two years. There is no overhead traffic that moves over the line, therefore, there is no necessity to reroute any overhead traffic. WVR certifies that no formal complaint by a user of rail service on the line (or by a state or local government acting in behalf of such a user) regarding cessation of service over the line either is pending with this Board or any U S District Court or has been decided in favor of the complainant within the past two years. A verification of the foregoing facts is attached to this Notice as Appendix 1.

Additional Information Required - 49 C.F.R. § 1152.55(a)(1)-(4), (7)-(8) and (c)(4)

(a) **General**

- (1) The railroad's exact name is Willamette Valley Railway Company (WVR)
- (2) WVR is a common carrier by railroad subject to 49 U S C Subtitle IV, Chapter 105
- (3) WVR intends to discontinue rail service over the Mill City Branch, i e ,

(1) from Milepost 689 64 at or near Page, Oregon to a mileage equation at Milepost 697 37, equivalent to Milepost 684 67, thence to Milepost 690 97 at or near Lebanon, Oregon, and (2) from Milepost 690 97 at or near Lebanon, Oregon to end of track at Milepost 725 71 at or near Mill City, Oregon, a total distance of approximately 48 77 miles in Linn County, Oregon

- (4) A map showing the location of the Mill City Branch in conjunction with other rail lines in the area is attached as Appendix 2
- (7) WVR's representative to whom correspondence regarding this Notice should be sent is Thomas F McFarland, Thomas F McFarland, P C , 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204
- (8) The Mill City Branch traverses U S Postal Service Zip Codes 97321, 97322, 97355 and 97360

(e)(4) Rural and Community Impact

The Mill City Branch is owned by UP. If this discontinuance becomes effective, shippers on the Branch would continue to be served by AERC, which has served them exclusively as UP's lessee for the past seven years. Thus, the proposed discontinuance will not have an impact on rural and community development.

Federally-Granted Right-of-Way

Based on information in WVR's possession, the Mill City Branch does not contain federally-granted right-of-way. Any documentation in WVR's possession will be made available promptly to those requesting it.

Labor Protection

No railroad employees would be adversely affected by the proposed discontinuance of rail service. Nevertheless, the interests of any adversely affected railroad employees would be protected by the conditions imposed in *Oregon Short Line Railroad Co -- Abandonment -- Goshen*, 360 I C C 91 (1979).

Certifications

Attached as Appendix 3 is a Certificate of Service and Publication pursuant to the notice requirements of 49 C F R § 1152.50(d)(1) and 49 C F R § 1105.12.

Environmental and Historic Considerations

For the reasons explained earlier, there is no requirement of environmental and historic reporting in regard to the proposed discontinuance of rail service.

DATED this 26th day of October, 2007

Respectfully submitted,

WILLAMETTE VALLEY RAILWAY COMPANY
P O Box 917
McMinnville, OR 97128

Applicant

Thomas F McFarland

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

DATE FILED October 29, 2007

APPENDIX 1

CERTIFICATION REQUIRED IN 49 C.F.R. § 1152.50(b)

In accordance with 49 C F R § 1152 50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket No 435 (Sub-No 2X) that (1) no traffic has moved over the line for at least two years prior to the date hereof and there is no overhead traffic that moves over the line, and (2) no formal complaint filed by a user of rail service on the line (or state or local governmental agency acting on behalf of such a user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U S District Court or has been decided in favor of a complainant within the two year period prior to the date hereof The foregoing certification is made on behalf of Willamette Valley Railway Company by the undersigned after due and careful investigation of the matters herein certified and based on the best knowledge, information and belief of the undersigned

Thomas F McFarland

Thomas F McFarland

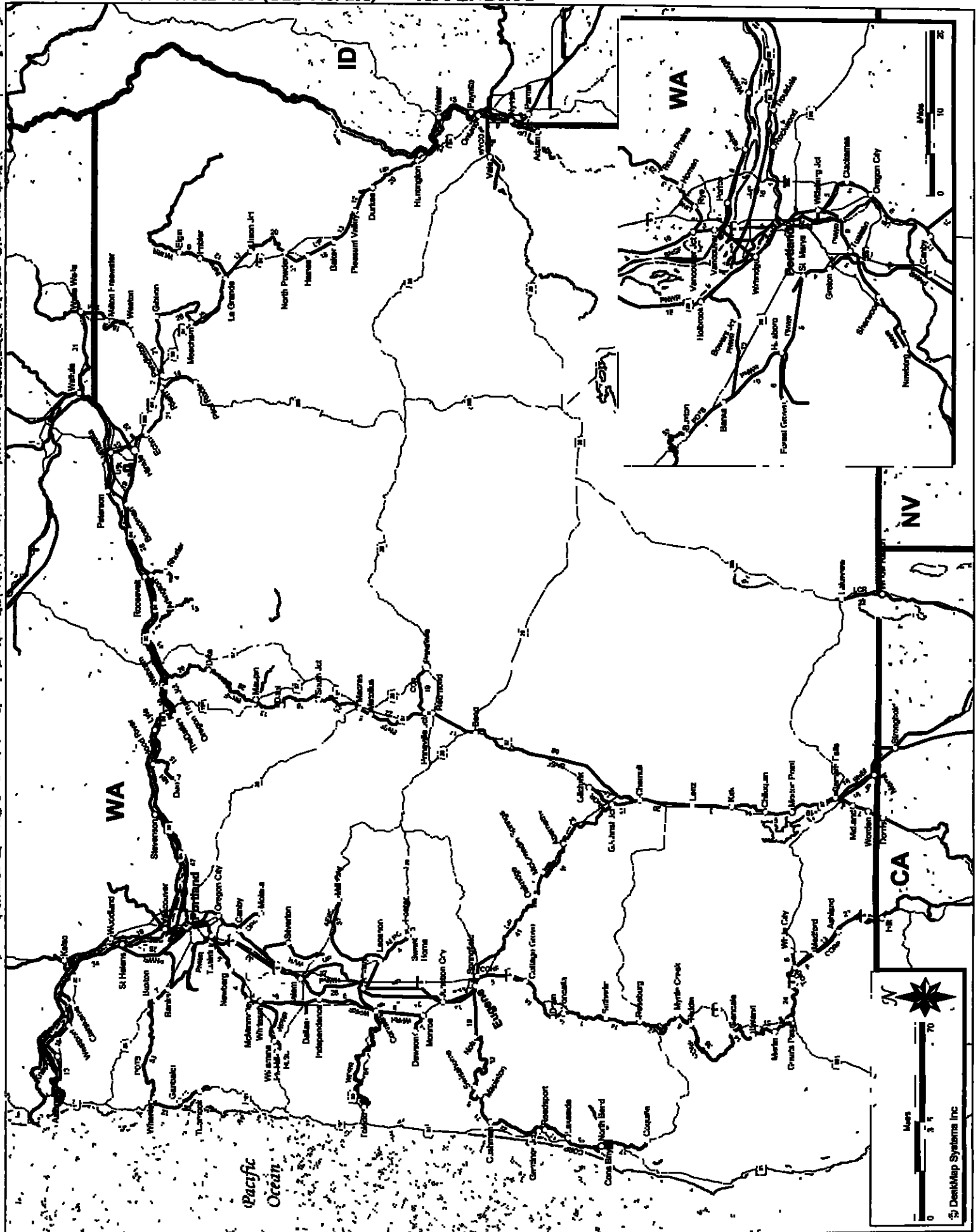
SUBSCRIBED and SWORN
to before me this 26th day of
October, 2007

Kathleen Lenhan

Notary Public



My commission expires 1/29/2010



APPENDIX 3

CERTIFICATE OF SERVICE AND PUBLICATION

49 C.F.R. § 1152.50(d)(1) - Notice

The undersigned certifies that on October 18, 2007 (at least 10 days before a Notice of Exemption is filed), written notice was given of Willamette Valley Railway Company's intent to use the exemption notice procedure in this docket to discontinue rail service over the Mill City Branch of Union Pacific Railroad (1) from Milepost 689 64 at or near Page, Oregon to a mileage equiation at Milepost 697 37, equivalent to Milepost 684 67, thence to Milepost 690 97 at or near Lebanon, Oregon, and (2) from Milepost 690 97 at or near Lebanon, Oregon to end of track at Milepost 725 71 at or near Mill City, Oregon, a total distance of approximately 48 77 miles in Linn County, Oregon. Written notice was served on the following

Public Utility Commission of Oregon
550 Capitol Street N E , Suite 215
Salem, OR 97301-2551

National Park Service
Pacific West Region
One Jackson Center
1111 Jackson Street, Suite 700
Oakland, CA 94607

U S Department of Agriculture
Chief of the Forest Service
4th Floor, N W , Auditor's Bldg
14th St & Independence Ave , S W
Washington, DC 20250

Department of Defense
Military Traffic Management Command
Transportation Engineering Agency
Railroads for National Defense Program
720 Thimble Shoals Blvd, Suite 130
Newport News, VA 23606-2575

Oregon Department of Transportation
Attn Robert I Melbo
555 13th Street, N E , Suite 3
Salem, OR 97301

49 C.F.R. § 1152.12 - Newspaper Notice

The undersigned further certifies that a "Notice of Intent to Abandon" was published in the form prescribed by the Board for a Notice of Exemption. The notice was published one time in a major newspaper in the county in which the Line is located as follows:

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Linn	Albany Democrat-Herald	October 24, 2007

Dated this 26th day of October, 2007

Thomas F. McFarland

Thomas F. McFarland