

226066

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

ENTERED
Office of Proceedings
NOV 25 2009
Part of
Public Record

THOMAS F. MCFARLAND

November 19, 2009

Mr. Mick Stanley
President
Cornerstone Industrial Minerals Corporation
P.O. Box 1287
96078 Industrial Lane
Lakeview, OR 97630

Mr. Dee Brown
Manager
The Collins Companies
P.O. Box 1340
1600 Missouri Avenue
Lakeview, OR 97630

Mr. Don Blansett
Modoc Land and Railway, LLC
P.O. Box 819
Tulelake, CA 96134

Mr. Ed Almaguer
Modoc Northern Railroad Company
4608 W. 1150S
Ogden, UT 84404

Re: Docket No. AB-1035, *Lake County, Oregon -- Adverse Discontinuance of Rail Service -- Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company*

Dear Gentlemen:

Pursuant to Ordering Paragraph 2 on page 3 of the decision of the Surface Transportation Board in the above proceeding served November 17, 2009, a copy of that decision is hereby served on you.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Lake County, Oregon

TMcF kl enc:wp8 0\1366\lirstbdec111709

cc: Surface Transportation Board
Jim Bailey, Esq.
John Heffner, Esq.

40186
EB

SERVICE DATE – NOVEMBER 17, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1035

LAKE COUNTY, OREGON—ADVERSE DISCONTINUANCE OF RAIL SERVICE—
MODOC RAILWAY AND LAND COMPANY, LLC AND MODOC NORTHERN
RAILROAD COMPANY

Decided: November 16, 2009

On July 30, 2009, Lake County, OR (County), filed a third-party or “adverse” discontinuance application under 49 U.S.C. 10903. The County seeks to discontinue the service provided by Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between milepost 456.89 at or near Alturas, CA, and milepost 512.30 at or near Lakeville, OR. MR&L and MNRR have not filed a reply in opposition to the discontinuance, and, as discussed below, we are granting the application.

BACKGROUND

According to the County, the line was constructed and operated for many years by Southern Pacific Transportation Company (SP). In 1985, the Board’s predecessor, the Interstate Commerce Commission, authorized SP to abandon the line.¹

The County acquired the line from SP after its abandonment. Through its Railroad Commission, the County contracted with The Great Western Railway Company (GWR) to operate the line pursuant to a modified certificate of public convenience and necessity. The County terminated rail operations by GWR, effective November 1, 1997. Thereafter, the County obtained its own modified certificate and commenced operation of the line through its Lake County Railroad division.²

In 2007, the County leased the line to MR&L and MNRR.³ In 2009, according to the County, MR&L and MNRR materially breached their lease agreement with the County. The

¹ See Southern Pac. Transp. Co.—Aband.—in Modoc County, CA and Lake County, OR, Docket No. AB-12 (Sub-No. 84) (ICC served Oct. 20, 1985).

² See Lake County Railroad—Modified Rail Certificate, STB Finance Docket No. 33581 (STB served Apr. 24, 1998).

³ See Modoc Railway and Land Company, LLC—Acq. & Oper. Exempt.—in Lake County, OR, STB Finance Docket No. 34995 (STB served Feb. 28, 2007); and Modoc Northern Railroad Co.—Acq. & Oper. Exempt.—in Lake County, OR, STB Finance Docket No. 34996 (STB served Feb. 28, 2007).

County further claims that, after the breach was not cured within the notice period required by that lease, it terminated the lease, effective May 7, 2009. The County states that it has resumed operation of the line, with Lake Railway acting as the County's agent for the provision of rail service on the line.

The County now seeks Board permission through this adverse discontinuance proceeding to terminate the regulatory authority of MR&L-MNRR to lease and operate the line. To facilitate this goal, the County filed a petition seeking waiver of certain Board regulations and exemption from certain provisions. The Board granted the majority of these waivers and exemptions in a decision served on June 15, 2009. Accordingly, the County filed its application on July 30, 2009, and notice of it was served and published in the Federal Register on August 19, 2009 (74 FR 41969). With its application, the County includes letters from the two companies that ship on the line, Cornerstone Industrial Minerals Corporation, U.S.A. (Cornerstone) and The Collins Companies (Collins), supporting continued operation of the line by Lake Railway.

DISCUSSION AND CONCLUSIONS

The statutory standard governing discontinuance of operations is whether the present or future public convenience and necessity require or permit the proposed discontinuance. In making the finding, the Board shall consider whether the discontinuance would have a serious, adverse impact on rural and community development. 49 U.S.C. 10903(d). The burden of proof is on the moving party. See Cheatham County Rail Authority "Application and Petition" for Adverse Abandonment, Docket No. AB-379X (ICC served Nov. 4, 1992).

The circumstances here warrant granting the discontinuance application, thereby removing the Board's primary jurisdiction over the discontinuance of rail service and allowing the County to pursue whatever relief it may need under state law to permanently remove MR&L and MNRR from the line. The record shows that MR&L and MNRR already have ceased operating on the line and that Lake Railway has commenced providing service. Because there will be no cessation of service, granting the application will not result in a service disruption. In fact, the County provides statements from the line's two shippers who express relief that Lake Railway is on the line and praise that railroad's service. Granting the application will therefore not harm rural or community interests. Lastly, no parties, including MR&L and MNRR, have filed in opposition to the application or attempted to refute any of the County's claims. Nevertheless, to ensure that MR&L, MNRR, Cornerstone, and Collins are fully informed of this action, we will require the County to serve a copy of this decision on these entities within 5 days of the service date and to certify to the Board that it has done so.

In approving this application, we must ensure that affected railroad employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions here.

Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking and public use requests are not appropriate. Also, based on the exemption the Board

granted in its June 15 decision, offers of financial assistance will not be entertained in this proceeding.

The June 15 decision waived compliance with environmental regulations because the Board found it unlikely that the discontinuance would result in any environmental impacts. Accordingly, no environmental assessment was prepared in this proceeding. See 49 CFR 1105.6(c) and 1105.8(b).

We find:

1. The present or future public convenience and necessity require or permit the discontinuance of operations by MR&L and MNRR over the above-described line of railroad, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. Discontinuance of operations by MR&L and MNRR will not result in a serious, adverse impact on rural and community development.
3. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's application for the adverse discontinuance of operations by MR&L and MNRR is granted.
2. The County is directed to serve a copy of this decision on MR&L, MNRR, Cornerstone, and Collins within 5 days after the service date of this decision to certify to the Board that it has done so.
3. This decision is effective December 17, 2009. Any petition to stay or reopen must be filed as provided at 49 CFR 1152.25(e).

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.