B.C.D. 05-25 **JUN 14 2005**

EMPLOYER STATUS DETERMINATION
Mission Mountain Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Mission Mountain Railroad, Inc., as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding Mission Mountain was provided by Craig R. Richey of Watco Companies, the indirect parent company of Mission Mountain. According to Mr. Richey, Mission Mountain began doing business December 27, 2003, and currently has approximately eight employees.

In Surface Transportation Board Finance Docket No. 34634, Mission Mountain filed a notice of exemption to acquire ("by purchase and lease") from the Burlington Northern Santa Fe Railroad Company (BNSF) and operate two rail lines in the state of Montana. One rail line is approximately 24 miles and the other is approximately 14 miles. Mission Mountain conducts freight operations on the lines and interchanges with the BNSF.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that Mission Mountain is a carrier operating in interstate commerce. Accordingly, it is determined that Mission Mountain is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of December 27, 2003, the date as of which it commenced operations.

Original Signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever