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SERVICE DATE – SEPTEMBER 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-570 (Sub-No. 3X)

PALOUSE RIVER & COULEE CITY RAILROAD, INC.–ABANDONMENT EXEMPTION–  
IN LATAH COUNTY, ID

Decided: September 9, 2009

Palouse River & Coulee City Railroad, Inc. (PRCC) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon 2.98 miles of rail line consisting of the following three segments between: (1) milepost 84.0, at the Washington-Idaho State line, and milepost 85.91, in Moscow, ID; (2) milepost 86.11 and milepost 86.9, in Moscow; and (3) milepost 85.5 and the end of the line at the intersection of A Street and Almon Street, in Moscow, Latah County, ID.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on August 11, 2009 (74 FR 40281). The notice stated that the exemption was scheduled to become effective on September 10, 2009, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by August 21, 2009.<sup>2</sup>

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 14, 2009. In the EA, SEA states that the National Geodetic Survey (NGS) has identified four geodetic station markers located in the area of the proposed abandonment. Accordingly, SEA recommends that PRCC be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

SEA also states that the U.S. Fish and Wildlife Service (USFWS) submitted comments stating that Spalding’s catchfly (Silene spaldingii), a Federally-listed threatened species, may occur in the area of this proposed abandonment.<sup>3</sup> In an August 6, 2009 phone call with SEA, the

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<sup>1</sup> PRCC’s segment located between milepost 85.91 and milepost 86.11 was authorized for abandonment in Palouse River & Coulee City Railroad, Inc.–Abandonment Exemption–in Latah County, ID, STB Docket No. AB-570 (Sub-No. 2X) (STB served Aug. 17, 2007).

<sup>2</sup> The McGregor Company timely filed a notice of intent to file an OFA but subsequently withdrew the notice as part of its settlement agreement with PRCC. See decision served August 28, 2009, in this proceeding.

<sup>3</sup> Spalding’s catchfly is a leafy, perennial plant in the carnation or pink family that emerges in the spring and dies back below ground level in the fall.

USFWS recommended that a botanist conduct a survey to determine if the species occurs in the project area. Accordingly, SEA recommends that, prior to the onset of salvage operations, PRCC retain a botanist to conduct a survey in order to determine if Spalding's catchfly occurs in the project area and submit the results of that survey to SEA. If the species does not occur in the project area, no further consultation or action would be necessary. However, if Spalding's catchfly is found in the project area, SEA will initiate consultations with USFWS, pursuant to Section 7 of the Endangered Species Act, to determine whether the proposed rail line abandonment is likely to adversely affect the species and, if so, to identify appropriate mitigation measures.

SEA states that the U.S. Environmental Protection Agency's Region 10 Office (USEPA) submitted comments expressing concern regarding the proposed abandonment's potential impacts to the water quality of Paradise Creek, which runs through the City of Moscow and the University of Idaho campus and flows across Idaho's border with Washington State to the South Fork of the Palouse River near Pullman, Washington. According to USEPA, Paradise Creek is on Idaho's list of impaired waters,<sup>4</sup> and activities near the creek, as well as ditches that drain into the creek, could further degrade water quality standards for sediment, nutrients and other criteria. Because a portion of the rail line proposed for abandonment is adjacent to Paradise Creek, USEPA recommended that the Idaho Department of Environmental Quality (Idaho DEQ) be contacted in order to determine if a water quality certification would be required for the project. SEA notes that the Idaho DEQ has reviewed the proposed abandonment and submitted comments in a separate letter.

The Lewiston Regional Office of the Idaho DEQ submitted comments stating that, in addition to being located adjacent to Paradise Creek, a portion of the line is adjacent to the remediated Sweet Avenue site and the Jackson Silo Brownfield project site.<sup>5</sup> Accordingly, Idaho DEQ recommended a number of mitigation measures including the following: (1) that a pollution prevention plan for sediment and erosion control should be developed to identify and prevent landslides and erosion that could result from the proposed rail line abandonment, and that a Clean Water Act Section 402 Construction Storm Water Permit may be required by the USEPA; (2) that PRCC employ methods to prevent leaching of wood preservatives from newly exposed treated wood surfaces during dismantling of rail line structures; (3) that PRCC restore the creek's riparian canopy cover, channel configuration and sinuosity in order to remediate pollutant loads where the rail line has affected these attributes;<sup>6</sup> (4) that PRCC identify and clean

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<sup>4</sup> Section 303(d) of the Clean Water Act establishes requirements for states to identify and prioritize water bodies that are considered "water quality limited" (i.e., water bodies that do not meet water quality standards).

<sup>5</sup> Before it was remediated, the Sweet Avenue site was considered a hazardous waste site because it was previously a fertilizer storage area. The Jackson Street silos property is an approximately 1.0-acre Brownfield parcel that was originally developed as a grain elevator and silo complex. Surface soil on the property was impacted by contaminants, such as the pesticide DDT and lead.

<sup>6</sup> It is well settled that in conducting an environmental review of abandonment cases, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency, (continued . . . )

up railroad tie piles, debris dumps, and contaminated areas; and (5) because adjacent properties have been shown to have contained hazardous materials or wastes, that PRCC develop a hazardous waste contingency plan to ensure that any hazardous wastes that are generated during salvage activities are stored and disposed of in accordance with the Idaho Hazardous Waste Management Act.<sup>7</sup> Accordingly, to address Idaho DEQ's concerns, SEA recommends that PRCC develop a hazardous waste contingency plan and consult with Idaho DEQ regarding salvaging and abandonment procedures prior to commencement of any salvage activities and report the results of these consultations in writing to SEA prior to the onset of salvage operations.

Comments to the EA were due by August 31, 2009. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line segments described above is subject to the conditions that PRCC shall: (1) consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; (2) retain a botanist to conduct a survey of the project area and submit the results of that survey to SEA, and if Spalding's catchfly (Silene spaldingii) is found in the project area, SEA will initiate Section 7 consultations with the USFWS to determine whether the proposed rail line abandonment is likely to adversely affect the species and, if so, to develop appropriate mitigation measures; and (3) prior to commencement of any salvage activities, PRCC will develop a hazardous waste contingency plan and consult with Idaho DEQ regarding salvaging and abandonment procedures, and report the results of the consultations in writing to SEA prior to the onset of salvage operations.

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( . . . continued)

e.g., the likely diversion of traffic to other lines or transportation modes and the likely disruptive consequences of removing the track and related structures. Iowa Southern R. Co.-Exemption-Abandonment, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8<sup>th</sup> Cir. 1990). The proposed abandonment does not include any bridge removal or in-water work; accordingly, the prevailing water flows of Paradise Creek will not be altered or impacted by the project. Because any conditions imposed, including environmental mitigation, must be directly related to the abandonment before the Board for approval and must be reasonable, Idaho DEQ's request for the railroad to restore the creek's riparian canopy cover, channel configuration and sinuosity appears to go beyond the Board's conditioning authority in abandonment cases.

<sup>7</sup> Any contingency plan would need to include notification of Idaho DEQ if hazardous wastes or materials are encountered.

3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary