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SERVICE DATE - NOVEMBER 6, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-570 (Sub-No. 1X)

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

Decided: November 3, 2000

Palouse River & Coulee City Railroad, Inc. (PRCC) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 26-mile portion of its rail line between milepost 21.0 at Harvard and milepost 47.0 at Bovill, in Latah County, ID. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891). The exemption is scheduled to become effective on November 7, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 13, 2000. In the EA, SEA states that Idaho Department of Environmental Quality (IDEQ) has expressed several concerns about water quality during salvage operations (which were set out in a letter from IDEQ included with PRCC's environmental report). IDEQ states that, during salvage operations, water quality within the Palouse River, Bear Creek, and Potlatch River watersheds needs to be carefully addressed because the watersheds are Section 303d Clean Water Act Listed Water Quality Limited, and are currently being evaluated for water pollution. Therefore, SEA recommends that, prior to abandonment and salvage of the right-of-way, PRCC further consult with the IDEQ to: (1) obtain a section 401 Clean Water Act, water quality certification, if needed; (2) develop a prevention plan to address possible rail bed material erosion; (3) develop a plan to identify and help prevent hill slope mass wasting/landslides; (4) develop methods to prevent leaching of wood preservatives from exposed treated wood; (5) identify stream reaches that may be affected by rail bed placement/location; (6) identify and clean up railroad tie pile debris dumps and contaminated areas; and (7) ensure that a hazardous materials contingency plan, which includes IDEQ notification, is in place to address hazardous materials remediation.

SEA also states that the Idaho Historic Preservation Office (SHPO) has indicated that the entire line is eligible for listing in the National Register of Historic Places. Therefore, SEA recommends that a condition be imposed requiring PRCC to further consult with the Idaho SHPO and retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA further states that the U.S. Army Corps of Engineers (Corps) has not completed its evaluation of the potential impact of the proposed abandonment. Therefore, SEA recommends that PRCC consult with the Corps prior to salvage of the right-of-way to determine if the

proposed project is consistent with applicable Federal, state and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act.

Finally, SEA states that the National Geodetic Survey (NGS) has identified 18 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring PRCC to consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

SEA initially stated in the EA that the U.S. Fish and Wildlife Service (FWS) had not completed its evaluation of the potential impact of the proposed abandonment and recommended that PRCC refrain from conducting any salvage activity until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531. In a letter filed October 13, 2000, FWS advised SEA that no adverse action is anticipated from the proposed abandonment. Therefore, according to SEA, the section 7 condition need not be imposed.

SEA also indicates that the right-of-way may be suitable for public use following abandonment. On October 13, 2000, Latah County Board of County Commissioners (Latah County) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with PRCC for acquisition of the right-of-way for use as a recreational trail. On October 26, 2000, Latah Trail Foundation Inc. (LTF) also requested a NITU and a public use condition.<sup>1</sup> Latah County and LTF request that PRCC be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms. Latah County and LTF request that PRCC be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. LTF states that the time period is needed to research abandonment issues, assemble and review title information, complete a trail plan and/or commence negotiations with PRCC. Latah County and LTF submitted statements of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29,

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<sup>1</sup> The October 6 notice provided that trail use/rail banking requests had to be filed by October 16, 2000. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that LTF's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

and they have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. PRCC has advised the Board that it is willing to negotiate with Latah County and LTF for interim trail use. In addition, on October 24, 2000, the Idaho Transportation Department (ITD) filed a request for a public use condition for portions of the right-of-way.<sup>2</sup>

Because Latah County's and LTF's requests comply with the requirements of 49 CFR 1152.29 and PRCC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, PRCC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The parties have satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, PRCC must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, PRCC is not required to deal exclusively with Latah County, LTF and ITD, but may engage in negotiations with other interested persons.

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

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<sup>2</sup> ITD states that it is interested in certain right-of-way property adjacent to state highways for possible public highway use.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above is subject to the conditions that PRCC shall: (a) prior to abandonment and salvage of the right-of-way, further consult with IDEQ to (i) obtain a section 401 Clean Water Act, water quality certification, if needed; (ii) develop a prevention plan to address possible rail bed material erosion; (iii) develop a plan to identify and help prevent hill slope mass wasting/landslides; (iv) develop methods to prevent leaching of wood preservatives from exposed treated wood; (v) identify stream reaches that may be affected by rail bed placement/location; (vi) identify and clean up railroad tie pile debris dumps and contaminated areas; and (vii) ensure that a hazardous materials contingency plan, which includes IDEQ notification, is in place to address hazardous materials remediation; (b) further consult with the Idaho SHPO and retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (c) consult with the Corps prior to salvage of the right-of-way to determine if the proposed project is consistent with applicable Federal, state and local water quality standards and to determine if permits are required under section 404 of the Clean Water Act; and (d) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.
3. The notice of exemption served and published in the Federal Register on October 6, 2000, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that PRCC keep intact the right-of-way underlying the tracks, including bridges trestles, culverts and tunnels, for a period of 180 days from the effective date (until May 6, 2001), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by May 6, 2001, interim trail use may be implemented. If no agreement is reached by that time, PRCC may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary