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SERVICE DATE – JANUARY 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-914X

McCLOUD RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION—IN SISKIYOU, SHASTA, AND
MODOC COUNTIES, CA

Decided: January 5, 2006

By decision served on October 14, 2005, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by McCloud Railway Company (MCR) of approximately 80 miles of rail line in Siskiyou and Shasta Counties, CA, and the discontinuance of service provided under a grant of trackage rights over a 31.4-mile line owned by BNSF Railway Company in Siskiyou and Modoc Counties, CA.¹ The Board granted the exemption subject to standard employee protective conditions and four environmental conditions. The exemption was scheduled to become effective on November 13, 2005, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by October 24, 2005, 10 days after the October 14 decision's service date.

On October 6, 2005, Seaside Holdings, Inc. (Seaside) filed a pleading styled a "Notice of Intent to File an Offer of Financial Assistance" to purchase the 80 miles of rail line proposed for abandonment. In the filing, Seaside also requested that MCR provide it with information necessary to formulate its OFA.

On October 17, 2005, MCR filed a petition to toll the 10-day period for submitting an OFA. MCR explained that it could not promptly furnish certain data sought by Seaside, and requested that an OFA be made due 10 days after the carrier provides the data to Seaside. In a decision served on October 19, 2005, the Board granted the request and directed MCR to notify the agency when it had furnished the information so that the due date for filing OFAs can be determined for the record. To date, the Board has not received any notification from the carrier.

¹ The 80 miles of rail line include: (1) a rail line between milepost 3.3 east of McCloud and the end of the track at milepost B-61 at or near Burney; (2) a rail line between milepost B-19 at or near Bartle and milepost B-31.4 at or near Hambone; (3) a rail line between milepost B-58 at or near Berry and milepost S-7 at or near Sierra; and (4) a rail line between milepost B-31.6 at or near Bear Flat and milepost P-3.93 at or near Pondosa.

On December 5, 2005, the Board received a copy of a letter sent to MCR by the Shasta-Trinity National Forest (STNF) regarding portions of the rail line that are subject to a U.S. Forest Service permit. STNF explains that it wants MCR to address certain environmental issues prior to abandoning the rail line and relinquishing the permit. The issues include: (1) the preservation of Forest Service rights-of-way and access issues for roadways; (2) the naturalization of waterways; (3) hazardous materials documentation; and (4) the development of a permit relinquishment plan. The Board's Section of Environmental Analysis (SEA) recommends that MCR consult with STNF Special Use Officer Stacy Smith, (530) 926-9643, concerning these issues prior to initiating salvage activities on the rail line proposed for abandonment. The additional environmental condition recommended by SEA will be imposed.

On December 7, 2005, SAVE BURNEY FALLS (SBF) filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for imposition of a public use condition under 49 U.S.C. 10905. SBF's request concerns a portion of the rail line between milepost 3.3 east of McCloud and the end of the track at milepost B-61 at or near Burney. In particular, SBF's request covers a 5.5-mile section of track between a point .25 miles west of milepost 54, at the point of intersection with California State Route 89 at Shasta milepost 24, and a point .75 miles east of milepost 60. Although SBF's request is late-filed, the Board accepts filings made after the due date when good cause is shown.² Because there is no indication that SBF's late-filed request will prejudice any party, it will be accepted.

SBF requests that MCR be prohibited from disposing of the pertinent corridor, other than the tracks, ties, and signal equipment, and that MCR 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. SBF explains that this corridor would make an excellent recreational trail. According to SBF, it needs the full 180-day period to assemble and review title information, to negotiate with MCR and various landowners, and to complete a trail plan.

SBF also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case 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 by 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. On December 22, 2005, MCR replied to SBF's trail use request. MCR states that it is not willing to negotiate with SBF for a trail use condition covering the section of the track.

² Notice of MCR's petition for exemption was served and published in the Federal Register on July 15, 2005 (70 FR 41074-01). The notice provided that any request for trail use/rail banking or a public use condition was due by August 4, 2005.

SBF's trail use request will be denied. A NITU can be issued only if (1) a prospective trail sponsor files the required statement of willingness and agrees to rail banking, and (2) the railroad voluntarily agrees to negotiate a Trails Act arrangement with the trail sponsor.³ Here, because MCR is unwilling to negotiate, a NITU cannot be issued.

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 for abandonment 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). SBF has satisfied the requirements for a public use condition, and therefore, imposition of it would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over a request for a public use condition. Therefore, issuance and effectiveness of the public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale of the line, the public use condition would be unnecessary and unavailable. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision will be issued.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the condition that MCR consult with Special Use Officer Stacy Smith, (530) 926-9643, concerning the environmental issues raised by STNF prior to initiating salvage activities on the rail line proposed for abandonment.
3. SBF's request for issuance of a notice of interim trail use is denied.
4. The request for issuance of a public use condition is held in abeyance pending completion of the OFA process.
5. If the OFA process terminates, a decision effective on its service date will be issued to impose the public use condition.

³ See National Wildlife Fed'n v. ICC, 850 F.2d 694 (D.C. Cir. 1988).

6. The decision is effective on its service date.

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

Vernon A. Williams
Secretary