

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: May 10, 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.<sup>1</sup> 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.

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<sup>1</sup> 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 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), and for imposition of a public use condition under 49 U.S.C. 10905. SBF's request concerned 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 covered a 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.

SBF requested 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 explained that this corridor would make an excellent recreational trail, and that it would need the full 180-day period to assemble and review title information, to negotiate with MCR and various landowners, and to complete a trail plan.

In a decision served on January 12, 2006, the Board, among other things,<sup>2</sup> found that SBF had satisfied the requirements for a public use condition. However, the Board noted that, because the OFA process takes priority over a request for a public use condition, imposition and effectiveness of the condition would be delayed until the OFA process is completed.<sup>3</sup> The Board explained that, 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 Board noted that an appropriate decision would be issued.

On May 2, 2006, SBF filed a petition asking the Board to expand the scope of the public use condition. SBF requests that the public use condition it previously proposed be expanded to cover approximately 3.25 additional miles, starting .25 miles west of milepost B-54 and heading east and north to milepost B-51. According to MCR, the proposed public use condition, as amended, would cover a continuous 8.25-mile section of track between a point at .75 miles east of milepost B-60 and a point at milepost B-51.

SBF also requests that the Board add .4 miles of track, which includes the portion of the Berry Wye at or near milepost B-58 that heads west to Sierra. SBF states that adding the section would combine the Berry Wye and .1 mile of track heading west to the point where the rail line crosses Black Ranch Road, prior to milepost S-1. MCR filed a reply on May 8, 2006.

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<sup>2</sup> The Board denied SBF's trail use request because the railroad refused to negotiate for the condition. Also, the Board imposed an additional environmental condition.

<sup>3</sup> The OFA process continues to develop. On January 19, 2006, Oregon Pacific and Eastern Railroad Company late-filed a pleading styled a "Notice of Intent to file Offer of Financial Assistance."

SBF's request is reasonable and will be granted. Accordingly, the public use condition, should it be imposed, will also encompass the segments described above.

Because MCR has not notified the Board that it has provided the missing OFA data, it appears that the railroad is still gathering it. MCR shall file a status report by June 12, 2006, describing its progress and the cause of the delay.

It is ordered:

1. The public use condition in this proceeding, should it be imposed, will include the additional segments described above.
2. MCR shall file a status report on the OFA process by June 12, 2006, describing its progress and the cause of the delay.
3. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary