

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 914X

McCLOUD RAILWAY COMPANY–ABANDONMENT AND DISCONTINUANCE OF  
SERVICE EXEMPTION–IN SISKIYOU, SHASTA, AND MODOC COUNTIES, CAL.

Decided: August 4, 2010

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, Cal., 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, Cal.<sup>1</sup> The Board granted the exemption subject to standard employee protective conditions and several environmental conditions.<sup>2</sup> The abandonment exemption became effective on November 20, 2006.<sup>3</sup>

By decision and notice of interim trail use or abandonment (NITU) served on December 29, 2009, the proceeding was reopened and was modified to implement interim trail use/rail banking, under the National Trails System Act (Trails Act), 16 U.S.C § 1247(d), and 49 C.F.R. § 1152.29. The NITU authorized a 180-day period, until June 28, 2010, for SAVE BURNEY FALLS (SBF) to negotiate with MCR for the above-described rail line.

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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.

<sup>2</sup> The Board removed an historic preservation condition in a decision served on November 6, 2009. The remaining environmental conditions involve notification and consultation requirements that relate to salvage, and, while still in effect, they are not a bar to consummating the abandonment.

<sup>3</sup> Seaside Holdings, Inc. filed an OFA to purchase the line, but a forced sale did not occur. A more complete history of the OFA process and other developments can be found in the decisions served in this proceeding on May 15, 2007, and November 6, 2009.

On June 28, 2010, SBF filed a request for an extension of the NITU negotiating period until December 26, 2010. SBF states that it has received a Letter of Intent from MCR and has commenced preliminary engineering and environmental studies, a title search, and other related information, including receipt of grant funds to cover costs of conducting due diligence work. SBF further states that it has made progress but needs additional time to complete negotiations with MCR.

By letter filed July 6, 2010, MCR notified the Board that it is not agreeable to the requested extension. MCR states that the extension is neither necessary nor appropriate because a trail use agreement between it and SBF was reached during the initial trail use negotiating period. Because trail use is voluntary with the carrier, and MCR has advised that it is not agreeable to an extension, an extension of the negotiating period cannot be granted. Accordingly, SBF's extension request will be denied.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SBF's request to extend the NITU negotiating period is denied.
2. This decision is effective on its service date.

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