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SERVICE DATE – DECEMBER 29, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-914X

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

Decided: December 28, 2009

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 several environmental conditions. The abandonment exemption became effective on November 20, 2006.<sup>2</sup>

Trail Use Request

In a letter filed on December 3, 2009, SAVE BURNEY FALLS (SBF) requests that the Board issue a notice of interim trail use (NITU) for the entire 80 miles of rail line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR

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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> 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.

1152.29.<sup>3</sup> SBF has submitted a statement of willingness to assume full 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way (ROW), as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on December 3, 2009, MCR states that it agrees to negotiate with SBF for trail use, and thus agrees to imposition of a trail use condition covering a 180-day negotiating period.

Trail use requests may be accepted as long as the Board retains jurisdiction over the ROW and the carrier is willing to enter into negotiations. Because MCR is willing to negotiate for trail use with SBF, and SBF's request otherwise complies with 49 CFR 1152.29, a NITU will be issued for the line. 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, MCR may fully abandon the line, provided that the conditions imposed in this proceeding are met.<sup>4</sup> See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

#### Public Use Request

In the same letter, SBF also requests imposition of a 180-day public use condition for the line under 49 U.S.C. 10905, specifically for trail use. SBF asks that MCR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms.

SBF's request for a 180-day public use condition will be denied. Pursuant to a prior request by SBF, the Board already imposed a 180-day public use condition in this proceeding that expired on May 19, 2007. See decision served on November 20, 2006. And, as explained in the Board's May 15, 2007 decision, 180 days is the maximum

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<sup>3</sup> The time for filing trail use requests has long since passed. However, in Aban. and Discon. Of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 900 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that SBF's late-filed submission 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).

<sup>4</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.

period permitted by statute for a public use condition. However, as noted in the May 15, 2007 decision, even though SBF's request is being denied, that does not preclude the parties from reaching a private agreement concerning the line.

This action 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. SBF's request for imposition of a public use condition is denied.
3. SBF's late-filed request for issuance of a trail use condition is accepted and granted.
4. Upon reconsideration, the decision served October 14, 2005, 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 to permit SBF to negotiate with MCR for trail use of the line, for a period of 180 days commencing from the service date of this decision and notice.
5. 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 (unless the user is immune from liability, in which case it need only to indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
6. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.
7. 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.
8. If an agreement for interim trail use/rail banking is reached by June 28, 2010, interim trail use may be implemented. If no agreement is reached by that time, MCR may fully abandon the line, provided the conditions imposed in this proceeding are met.
9. This decision is effective on its service date.

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