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SERVICE DATE – APRIL 5, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-600 (Sub-No. 1X)

YAKIMA INTERURBAN LINES ASSOCIATION—ABANDONMENT EXEMPTION—IN
YAKIMA COUNTY, WA

Decided: April 4, 2006

Yakima Interurban Lines Association (YILA) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad known as the Naches Branch, from milepost 2.97 (near Yakima) to milepost 14.26 (near Naches), a distance of approximately 11.29 miles in Yakima County, WA. YILA also sought exemption from the offer of financial assistance (OFA) procedures at 49 U.S.C. 10904. In addition, a request on behalf of Yakima County (County) for issuance of a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was filed with the notice. Notice of the exemption was served and published in the Federal Register on January 19, 2006 (71 FR 3153-54).

On January 24, 2006, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) assessing the proposed abandonment for public review and comment. The exemption was scheduled to become effective on February 18, 2006, unless stayed pending reconsideration by the Board or unless a formal expression of intent to file an OFA was received. On February 6, 2006, Oregon Pacific & Eastern Railroad Company (OP&E) late-filed a notice of intent to file an OFA.

In a decision served on February 17, 2006, the Board accepted for filing OP&E's late-filed notice of intent to file an OFA and postponed the effective date of the exemption until 10 days after the due date for OP&E's OFA. Also YILA's request for exemption from the OFA requirements of 49 U.S.C. 10904 was denied, the County's request for issuance of a NITU was held in abeyance pending completion of the OFA process, and environmental conditions recommended by SEA were imposed on the proposed abandonment.

By letter filed on March 23, 2006, OP&E filed a request to toll the time period for submission of its OFA and for a protective order. By letter filed on March 27, 2006, however, OP&E sought permission to withdraw its notice of intent to file an OFA. The request will be granted. Accordingly, the OFA process is now terminated and the prior abandonment authorization will be effective on the service date of this decision and notice, subject to the

environmental conditions imposed in the February 17, 2006 decision. OP&E's tolling request and request for a protective order will be dismissed as moot.

As indicated in the February 17, 2006 decision, the County submitted a request for issuance of a NITU for the subject line under the Trails Act, in order to negotiate with YILA for acquisition of the right-of-way for interim trail use. The County 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 acknowledged that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. Also as noted in that decision, YILA has consented to negotiate with the County for interim trail use.

The trail use request was held in abeyance pending the outcome of the OFA process. The OFA process is now being terminated without a sale or subsidy of the line under that process. Because the County's request complies with the requirements of 49 CFR 1152.29 and YILA 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, YILA 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.

This decision and notice 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. The request for permission to withdraw the notice of intent to file an OFA is granted and the financial assistance process in this proceeding is terminated.
3. OP&E's tolling request and request for a protective order are dismissed as moot.
4. The decision served on February 17, 2006, is vacated to the extent it postponed the effective date of the abandonment exemption to permit the OFA process to proceed.
5. The exemption will become effective on the service date of this decision and notice, subject to the environmental conditions imposed in the February 17, 2006 decision, and subject to the trail use/rail banking provisions discussed below.

6. Upon reconsideration, the notice served and published in the Federal Register on January 19, 2006, 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, for a period of 180 days commencing from the service date of this decision and notice (until October 2, 2006).

7. 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 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.

8. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

9. 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.

10. If an agreement for interim trail use/rail banking is reached by October 2, 2006, interim trail use may be implemented. If no agreement is reached by that time, YILA may fully abandon the line.

11. This decision and notice is effective on its service date.

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

Vernon A. Williams
Secretary