

SERVICE DATE – MAY 15, 2007

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 11, 2007

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 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.

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 June 26, 2006, following receipt of the information it had sought, Seaside timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the 80 miles of line. In a decision served on June 28, 2006, the Board found Seaside to be financially responsible and postponed the effective date of the abandonment exemption to permit the OFA process to proceed. Subsequently, on July 26, 2006, Seaside filed a request asking that the Board set the terms and conditions for the purchase of the 80 miles of line. Thereafter, in a decision served on August 25, 2006, the Board set the purchase

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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.

price for that line at \$3,466,313 and established terms for transfer of the line, including the typical 90-day period for closing on the sale.

On September 5, 2006, counsel for Seaside filed a letter stating that the offeror accepted the Board's terms and conditions. The Board approved the sale and dismissed the petition for exemption as to the 80 miles of rail line, effective on the date of consummation of the sale, in a decision served on September 12, 2006.

On November 1, 2006, the Board received a copy of a letter from Seaside's counsel to MCR's counsel stating that Seaside will not consummate the rail line acquisition. On November 7, 2006, MCR filed a petition asking that the Board vacate the decision served on September 12, 2006, and reinstate the decision served on October 14, 2005, so that the railroad can abandon the line.

In a decision served on November 20, 2006, the Board granted MCR's petition. The Board noted that, when an entity offering to purchase a line later notifies the Board that it is withdrawing its OFA, the agency will serve a decision vacating the decision which postponed the effective date of the decision granting the exemption. See 49 U.S.C. 10904, 49 CFR 1152.27(g)(2), and 49 CFR 1152.27(h)(7). Accordingly, the Board terminated the OFA process and vacated the decisions served on June 28, 2006, August 25, 2006, and September 12, 2006, to the extent necessary to permit the prior abandonment exemption for the line, subject to the previously imposed conditions, to become effective.

The Board also noted in the November 20, 2006 decision that SAVE BURNEY FALLS (SBF) had filed a request asking for imposition of a trail use condition, which had been denied due to MCR's objection, and for issuance of a public use condition, which had been granted for a portion of the line but its effectiveness delayed due to the OFA process. In its decision, the Board ordered that the 180-day public use period would commence on the decision's November 20, 2006 service date and run until May 19, 2007.

By letter filed on April 16, 2007, SBF requests that the Board extend the public use condition beyond the 180th day of May 19, 2007. MCR replied in opposition.

SBF's request will be denied. It is settled that 180 days is the maximum period permitted by statute for a public use condition and that it may not be extended beyond that time period. See 49 U.S.C. 10905; 49 CFR 1152.28(b); and Rail Abandonments—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-98 (1992). However, even though SBF's request is being denied, it should be noted that the end of the public use negotiating period does not preclude the parties from reaching a private agreement on the pertinent segment's future use.

This action 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 public use condition is denied.
2. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary