

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 914X

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

Decided: June 13, 2012

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

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 for SAVE BURNEY FALLS (SBF) to negotiate with MCR for interim trail use on the above-described rail line. The NITU expired by its own terms on June 28, 2010.

By decision and notice served on October 4, 2011, the proceeding was reopened, the consummation deadline was extended to the service date of the decision and notice, and a new

¹ 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.

² 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.

NITU was issued that permitted SBF to continue to negotiate a final agreement with MCR for a period of 180 days, until April 1, 2012.

On April 23, 2012, Shasta Land Trust (SLT) and SBF filed separate requests for the Board to reopen the proceeding, vacate the existing NITU, and issue a replacement NITU substituting SLT as the new interim trail sponsor in place of SBF. SLT states that, on March 29, 2012, it entered into a purchase and sale agreement with 4 Rails, Inc. (parent company of MCR) to purchase the right-of-way for future use as a trail, and that SLT will hold title to the property at the close of escrow. On May 3, 2012, MCR indicated it concurs with the substitution.

SLT has submitted a statement of willingness to assume 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and acknowledges that the use of the right-of-way for trail purposes is subject to the future reactivation for rail service. Accordingly, the request will be granted and a replacement NITU will be issued.

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. The NITU served on October 4, 2011, is vacated.
3. A replacement NITU applicable to SLT as interim trail sponsor is issued, effective on the service date of this decision and notice.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new sponsor's continuing to meet the financial obligations for the right-of-way.
5. If the trail sponsor 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.
6. This decision and notice is effective on its service date.

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