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SERVICE DATE - MAY 16, 1997

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Docket No. AB-433X

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN WALLOWA AND UNION COUNTIES, OR

Decided: May 9, 1997

By decision served March 12, 1997, the Board granted a petition filed by Idaho Northern & Pacific Railroad Company (IN&P) for an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon a 60.58-mile portion of its Joseph Branch between milepost 23.0 near Elgin and milepost 83.58 at Joseph, in Wallowa and Union Counties, OR (the line). The grant was made subject to standard labor protective conditions and environmental conditions. The decision provided that the exemption would become effective on April 17, 1997.<sup>2</sup>

On April 7, 1997, the Oregon Parks and Recreation Department (Oregon) filed a request for the 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) and 49 CFR 1152.29. Alternatively, Oregon sought a 180-day public use condition so that it could negotiate with IN&P for use of the line as a recreational trail. IN&P, through its attorney, states that it is not willing to negotiate with Oregon for interim trail use. Therefore, because 16 U.S.C. 1247(d) permits only voluntary interim trail use, a NITU cannot be issued in this proceeding. *See Rail Abandonments--Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. *See Trails*, 2 I.C.C.2d at 609. Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

Oregon's submission meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for imposition of the time period requested. Accordingly, the requested 180-day public use condition will be imposed.

A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

<sup>2</sup> On April 2, 1997, Wallowa Forest Products, LLC, filed a petition seeking the reopening of the proceeding and a stay to the prior decision. By decision served April 16, 1997, the Board denied the request to reopen which, in turn, made the stay request moot.

found suitable for public purposes. All interested parties are encouraged promptly to pursue negotiations, as the 180-day period is statutory and cannot be extended.

As conditioned, 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 request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted. The exemption of the abandonment of the line described above is subject to the previously imposed conditions and the additional condition that IN&P leave intact all of the right-of-way underlying the tracks, including bridges, culverts and tunnels (but not track or other rail assets), for a period of 180 days from the April 17, 1997 effective date of the exemption (i.e., until October 14, 1997), to enable any State or local government agency or other interested person to negotiate the line's acquisition for public use.
4. The decision is effective on the service date.

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

Vernon A. Williams  
Secretary