

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-485X

BLUE MOUNTAIN RAILROAD, INC.--ABANDONMENT EXEMPTION--  
IN WHITMAN COUNTY, WA, AND LATAH COUNTY, ID

Decided: February 25, 1997

By petition filed November 12, 1996, as supplemented on January 30, 1997, Blue Mountain Railroad, Inc. (BMR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon three segments of its rail line, totaling 7.45 miles, in Whitman County, WA, and Latah County, ID. The three line segments are located between: (1) milepost 19.0 at Kamiaken Street and milepost 19.30 at Pullman, WA; (2) milepost 19.75 at Pullman and milepost 25.50 near Moscow, ID; and (3) milepost 26.10 near Moscow and milepost 27.50 at Line Street in Moscow.<sup>1</sup> BMR also seeks exemptions from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Whitman County and the cities of Moscow and Pullman (the Consortium) jointly request expedited consideration of the petition and issuance of a notice of interim trail use (NITU).<sup>2</sup> We will grant the requested exemptions and issue a NITU, subject to labor protective conditions, an historic preservation condition, and environmental conditions.

BACKGROUND

BMR acquired the line from the Union Pacific Railroad Company (UP) in 1992.<sup>3</sup> Historically, the line has been used to transport shipments of agricultural products, dry fertilizers, and coal. Running parallel to the line between Pullman and Moscow is another rail line formerly owned by the Burlington Northern Railroad Company and recently acquired by the Palouse River & Coulee City Railroad, Inc. (PRCC).<sup>4</sup>

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<sup>1</sup> BMR will retain two segments of the line, between mileposts 19.30 and 19.75 at Pullman and mileposts 25.50 and 26.10 near Moscow, for use in serving the two local shippers on the line as explained below.

<sup>2</sup> Letters in support of the proposed abandonment and/or issuance of a NITU were filed by Mayor of Pullman, Mayor of Moscow, Moscow Community Development Director, Moscow Bicycle Advisory Commission, Palouse-Clearwater Environmental Institute, Pullman Civic Trust, The McGregor Company, University of Idaho, Washington State University, Whitman County Commissioners, and Whitman County Historical Society, Inc.

<sup>3</sup> See Blue Mountain Railroad, Inc.--Lease, Acquisition and Operation Exemption--Lines of the Union Pacific Railroad Company, Finance Docket No. 32193 (ICC served Dec. 1, 1992). BMR has operated the line doing business as Palouse River Railroad Company.

<sup>4</sup> See Palouse River & Coulee City Railroad, Inc.--Acquisition Exemption--Burlington Northern Railroad Company,

Only two shippers currently use the line; Washington State University (WSU) receives shipments of coal and The McGregor Company (McGregor) receives shipments of fertilizer. Both shippers support the proposed abandonment because neither shipper will lose rail service. BMR will continue to serve WSU via trackage rights at Pullman,<sup>5</sup> and the retained rail segment between milepost 19.30 and 19.75 in Pullman. McGregor will have rail service available via PRCC.<sup>6</sup> BMR also is retaining the rail segment between milepost 25.50 and 26.10 to facilitate continued rail service to McGregor. In addition to rail service, BMR submits that truck service is readily available.

According to BMR, the proposed abandonment will eliminate excess rail capacity between Pullman and Moscow and permit it to salvage rail assets for more productive use on other parts of its railroad system. At the same time, BMR asserts that abandonment will permit the construction of a much needed and desired trail between WSU and the University of Idaho. Upon receipt of authority to abandon, BMR has agreed to donate the right-of-way underlying the three segments and to grant easements over the two retained segments to the Consortium for interim trail use. The creation of a trail between Pullman and Moscow has been a long-range project for the local communities and is expected to provide a safe alternative to highway travel for college students.

#### DISCUSSION AND CONCLUSIONS

Abandonment Exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also allow BMR to avoid maintaining

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STB Finance Docket No. 33041 (STB served Sept. 27, 1996).

<sup>5</sup> See Blue Mountain Railroad, Inc.--Trackage Rights Exemption--Burlington Northern Railroad Company, Finance Docket No. 32653 (ICC served Feb. 21, 1995). In its supplement to the petition, BMR states that it is already serving WSU pursuant to the trackage rights.

<sup>6</sup> In its supplement to the petition, BMR explains that, before consummating any abandonment, it had originally intended to obtain Board approval for trackage rights so that it could continue to serve McGregor over PRCC's line. Subsequently, however, it entered into negotiations for the sale of certain rail assets that would have made a trackage rights arrangement unnecessary. Pending completion of those negotiations, PRCC has agreed to serve McGregor.

and operating this redundant rail line and to apply its assets more productively elsewhere on its system, thereby promoting efficient rail transportation, fostering sound economic conditions, and encouraging efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the proposed transaction also is not necessary to protect shippers from an abuse of market power. Both WSU and McGregor support the proposed abandonment and will continue to have rail service available. Alternative truck transportation is also available over the network of highways that traverse the line. To ensure that the shippers are informed of our action, we will require BMR to serve a copy of this decision on each of them within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Labor protection. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Environmental conditions. BMR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment.

In the environmental assessment (EA) served on December 19, 1996, SEA preliminarily concluded that the following conditions should be imposed on any grant of abandonment authority: (1) BMR shall ensure that any water that may be used for dust control during salvaging activities not be discharged into creeks, ditches, or other waterways; (2) BMR, prior to commencing salvage operations, shall consult with the Idaho Department of Water Resources and the U.S. Army Corps of Engineers to determine if permits are required; (3) BMR shall implement Best Management Practices during salvage operations; and (4) BMR, prior to commencing salvage operations, shall consult with the Idaho Division of Environmental Quality (IDEQ) to develop a mitigation contingency plan for unrecorded hazardous material releases, if such sites are encountered during track removal activities, and advise SEA of the results of its consultations, including providing SEA with a copy of the IDEQ-approved mitigation plan. SEA also indicated that the right-of-way may be suitable for other public use under 49 U.S.C. 10905.

In response to comments to the EA, SEA recommends that the following additional conditions be placed on any decision granting abandonment authority: (5) BMR shall consult with the Idaho State Historical Society and the Washington State Office of Archaeology and Historic Preservation concerning the development

and installation along the right-of-way of interpretive signs to discuss the historical significance of the railroad; (6) BMR shall consult with the Washington Department of Ecology concerning the identification and protection of wetlands along the right-of-way; and (7) BMR shall consult with the Whitman County Health District to discuss permits or limitations on disposal and/or storage of materials removed from the track bed.

Based on SEA's recommendations, which we adopt, we conclude that the proposed abandonment, if implemented subject to the above conditions, will not significantly affect either the quality of the human environment or conservation of energy resources.

Trail use. Requests for issuance of a NITU were received from: (1) the city of Moscow to acquire for trail use a 1.27-mile portion of the right-of-way, between milepost 26.23 at the Washington/Idaho state line and milepost 27.50 at Line Street in Moscow; and (2) the city of Pullman and Whitman County to acquire 6.18-miles of the right-of-way for trail use between (a) milepost 19.0 near Kamiaken Street and milepost 19.30 at Pullman, (b) milepost 19.75 at Pullman and milepost 25.50 near Moscow, and (c) milepost 26.10 near Moscow and milepost 26.23 at the Idaho/Washington state line, for bicycle, pedestrian, or other trail use purposes and rail banking under the National Trails System Act, 16 U.S.C. 1247(d). Both trail use proponents submitted statements of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29, and BMR has already agreed to donate the right-of-way to the Consortium.

While a request for interim trail use can be filed within 10 days after the date a notice of exemption is published in the Federal Register [49 CFR 1152.29(b)(2)], the parties have currently met the criteria for imposing trail use and rail banking. Therefore, we will issue a NITU covering the portions of the right-of-way described above. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a trail use agreement, our further approval is unnecessary. If no agreement is reached within 180 days, BMR may fully abandon the line, subject to the conditions imposed here. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

We will not provide an opportunity for other persons to file trail use/rail banking requests. Under section 8(d) of the Trails Act, trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. Because BMR has already agreed to donate the right-of-way to the Consortium for interim trail use, other trail requests would be moot.

Other Exemptions. BMR has also framed its request for exemption to extend to 49 U.S.C. 10904, involving OFAs, and to 49 U.S.C. 10905, involving public use conditions. Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail

service.<sup>7</sup> BMR has shown that the right-of-way is needed for a valid public purpose, i.e., interim trail use. There is alternative rail service available and the two shippers on the line support the abandonment petition. Therefore, there is no overriding public need for continued rail service. On the other hand, imposition of OFA procedures or a public use condition would only delay transfer of the line for trail use and unnecessarily jeopardize funding for the construction of the trail. The Washington Department of Transportation has warned that funding for the trail may not be available after May 1997. Accordingly, BMR and the Consortium request expedited consideration of the petition and concurrent issuance of a NITU. To accommodate the request for expedition, we will grant an exemption from 49 U.S.C. 10904-05 and make the decision effective on its date of service.<sup>8</sup>

It is ordered:

1. The requests for interim trail use/rail banking under 16 U.S.C. 1247(d) are accepted.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-05 the abandonment by BMR of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the following trail use/rail banking, environmental, and historic preservation conditions: (1) BMR shall comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below; (2) BMR shall ensure that any water that may be used for dust control during salvaging activities not be discharged into creeks, ditches, or other waterways; (3) BMR, prior to commencing salvage operations, shall consult with the Idaho Department of Water Resources and the U.S. Army Corps of Engineers to determine if permits are required; (4) BMR shall implement Best Management Practices during salvage operations; (5) BMR, prior to commencing salvage operations, shall consult with the IDEQ to develop a mitigation contingency plan for unrecorded hazardous material releases, if such sites are encountered during track removal activities, and advise SEA of the results of its consultations, including

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<sup>7</sup> See K & E Railway Company--Abandonment Exemption--In Alfalfa, Garfield, and Grant Counties, OK, and Barber County, KS, STB Docket No. AB-480X (STB served Dec. 31, 1996) slip op. at 4, citing Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994); Missouri Pacific Railroad Company--Abandonment--In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); Chicago & North Western Transportation Company--Abandonment Exemption--In Blackhawk County, IA, Docket No. AB-1 (Sub-No. 226X), et al., (ICC served July 14, 1989); and Iowa Northern Railway Company--Abandonment--In Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

<sup>8</sup> Having exempted the proposed abandonment from 49 U.S.C. 10904-05, we have eliminated the need to extend the effective date of the abandonment exemption to consider OFAs and requests for public use conditions.

providing SEA with a copy of the IDEQ-approved mitigation plan; (6) BMR shall consult with the Idaho State Historical Society and the Washington State Office of Archaeology and Historic Preservation concerning the development and installation along the right-of-way of interpretive signs to discuss the historical significance of the railroad; (7) BMR shall consult with the Washington Department of Ecology concerning the identification and protection of wetlands along the right-of-way; and (8) BMR shall consult with the Whitman County Health District to discuss permits or limitations on disposal and/or storage of materials removed from the track bed.

3. Subject to the conditions set forth above, BMR may discontinue service and salvage track and track materials consistent with interim trail use/rail banking after the effective date of the exemption.

4. 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, 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 from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. 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.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, BMR may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. Notice will be published in the Federal Register on March 4, 1997.

9. BMR is directed to serve a copy of this decision on WSU and McGregor within 5 days after the service date of this decision and certify to us that it has done so.

10. This exemption will be effective on March 4, 1997.

11. Petitions to reopen must be filed by March 31, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

STB Docket No. AB-485X

Vernon A. Williams  
Secretary