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SERVICE DATE – NOVEMBER 20, 2006

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: November 17, 2006

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 October 17, 2005, MCR filed a petition to toll the 10-day period for submitting an OFA. MCR explained that it could not promptly furnish certain data sought by Seaside, and requested that an OFA be made due 10 days after the carrier provided the data to Seaside. In a decision served on October 19, 2005, the Board granted the request and directed MCR to notify the agency when it had furnished the information so that the due date for filing OFAs could be determined. On June 15, 2006, MCR notified the Board that it would be providing the information concerning the estimated Net Liquidation Value of the rail line to Seaside and others on June 16, 2006.

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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.

On June 26, 2006, 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, by the Director of the Office of Proceedings, 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 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. In that decision, the Board also directed Mr. Jeff Forbis to promptly, but in any event prior to closing, cause 4 Rails Inc. to convey to MCR all of its title and interest in the subject real estate if Seaside accepts the terms established by the Board.

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.

When an entity offering to purchase a line later notifies the Board that it is withdrawing its OFA, the Board 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). Here, the OFA process will be terminated and the decisions served on June 28, 2006, August 25, 2006, and September 12, 2006, will be vacated to the extent necessary to permit the prior abandonment exemption for the line, subject to the previously imposed conditions, to become effective on the service date of this decision. Because the OFA process is being terminated, the condition in the August 25 decision requiring Mr. Forbis to have 4 Rails Inc. convey its title and interest in the real estate in question to MCR if Seaside accepts the Board's terms is also vacated.

As indicated in the decision served on January 12, 2006, SAVE BURNEY FALLS (SBF) filed a request asking for imposition of a trail use condition and issuance of a public use condition covering a 5.5-mile segment of track. Although the Board held in that decision that the trail use condition could not be imposed, the agency found that SBF had satisfied the criteria for the imposition of the public use condition. The Board noted, however, that issuance and effectiveness of the public use condition would be

delayed until the OFA process had been completed.<sup>2</sup> Because the OFA process will now be terminated, the public use condition period will commence with the effective date of this decision.

This decision 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 decisions served on June 28, 2006, August 25, 2006, and September 12, 2006, are vacated to the extent necessary to permit the abandonment exemption in this proceeding to become effective, and the OFA process in this proceeding is terminated.
3. The ordering paragraph requiring Mr. Forbis to have 4 Rails Inc. convey its title and interest in the real estate in question to MCR if Seaside accepts the Board's terms is vacated from the decision served on August 25, 2006, in this proceeding.
4. The abandonment exemption will become effective on the service date of this decision, subject to the conditions previously imposed in this proceeding, and to the condition that MCR shall keep intact the sections of track described in decisions served on January 12, 2006, and May 12, 2006, including bridges, trestles, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from November 20, 2006, until May 19, 2007, to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
5. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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<sup>2</sup> In a decision served on May 12, 2006, the Board also found that action on the public use condition would be delayed pending the outcome of the OFA process when it granted SBF's request to broaden the scope of the public use condition.