SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-564

CAMAS PRAIRIE RAILNET, INC.–ABANDONMENT–IN LEWIS, NEZ PERCE, AND IDAHO COUNTIES, ID (BETWEEN SPALDING AND GRANGEVILLE, ID)

Decided: September 12, 2000

By an application filed May 26, 2000, Camas Prairie RailNet, Inc. (CSPR or applicant) seeks authority under 49 U.S.C. 10903 to abandon a line of railroad known as the Grangeville Line, or Second Subdivision, extending from milepost 0.00 near Spalding, ID, to milepost 66.8 (end of track) near Grangeville, ID, a distance of 66.8 miles, in Lewis, Nez Perce, and Idaho Counties, ID. On June 15, 2000, the Board served and published in the Federal Register (65 FR 37598-99) notice of the filing of the application.

Protests were filed by the Idaho Public Utilities Commission (IPUC), Save The Camas Prairie Railroad Committee (the Committee), and the additional public and private entities and individuals listed in Appendix A (hereafter, protestants).[1] Requests for a public use condition

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[1] Embraced in IPUC's protest are the verified statements of: Dirk Kempthorne, Governor of Idaho; economist Joseph Plaistow, of L.E. Peabody & Associates, Inc.; engineer Richard H. McDonald, of RHM Consulting, Inc.; Gary Mahn, of the Idaho Department of Commerce; real estate appraiser Ed Morse, of Morse & Company; economist Steven Peterson, of the University of Idaho; biologist Gregg N. Servheen, of the Idaho Department of Fish and Game; Douglas Scoville, of the Idaho Barley Commission; and Denver D. Tolliver, of the Upper Great Plains Transportation Institute.

The Committee consists of the seven largest shippers on the line, communities located along the line, representatives of grain producers whose farms are located near the line, and numerous citizens residing in the area served by the line. Appended to the protest are the signatures of approximately 1,300 local citizens who oppose abandonment.

Embraced in the Committee's protest are verified statements of Paul Wyatt, former General Manager of applicant; Carl Younce, of Cenex Harvest States, Lewiston Grain Growers Division (LGG); Russell Braun, of Columbia Grain Int'l, Inc. (Columbia); Brad Bower, of U.S. Timber Co.; Bill Roper, of Union Warehouse & Supply Company (Union Warehouse); John Bennett, of Shearer Lumber Company (Shearer); Jay G. Eimers, of Idaho County Light & Power Cooperative Association, Inc. (Light & Power); Ronald Jensen, of Atlas Sand & Rock, Inc.

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were filed by IPUC and the Nez Perce Tribal Executive Committee (the Nez Perce). The Nez Perce also requested issuance of a certificate of interim trail use or abandonment (CITU). Applicant replied to the protests of IPUC and the Committee. IPUC and the Committee jointly filed a motion to strike portions of applicant's evidence, to which applicant replied.[2]

On August 16, 2000, IPUC and the Committee jointly moved to augment the record and submitted: (1) copies of 43 CSPR bridge inspection reports dated May 23, 2000, (2) copies of two Federal Railroad Administration (FRA) bridge inspection reports dated November 18 and 19, 1999, and (3) a copy of an 1899 Federal statute entitled, "An act granting to the Clearwater Short Line Railway Company a right-of-way through the Nez Perce Indian lands in Idaho," March 1, 1899, 30 Stat. 918 (the 1899 Act), that granted a predecessor of applicant a right-of-way through Nez Perce Indian lands. Protestants assert that, although they requested the inspection reports during discovery, applicant did not provide its reports until after protestants had filed their protests, and that the FRA inspection reports had to be obtained from an FRA regional office. Protestants add that the 1899 Act clarifies an exhibit applicant omitted from its reply and did not serve on them until August 2.

Protestants should be permitted to submit the inspection reports. While a reply to applicant's reply is not permissible under our rules of procedure, applicant will not be prejudiced by our accepting a copy of a Federal statute. Accordingly, we will grant the motion and accept the material into the record in its entirety.

Upon review of the record, we conclude that the application should be granted, subject to environmental, historic preservation, public use, and standard employee protective conditions, and that a CITU should be issued.

OPERATIONS, TRAFFIC, AND REVENUES

Background. In April 1998, CSPR, then a newly-established Class III carrier, acquired the Grangeville Line as a part of a 245-mile system of four interconnected rail lines owned by the Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railroad Company (BNSF) and operated by the Camas Prairie Railroad Company, a jointly-owned subsidiary of UP and BNSF.[3] CSPR asserts that it knew at the time of purchase that the

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[1](...continued)
(Atlas); Steve Johnson, of Idaho Grain Producers Assn. (Idaho Grain); and Lori Cox, of the Grangeville Chamber of Commerce.

[2] We will address the motion below.

[3] See Camas Prairie RailNet, Inc.–Acquisition and Operation Exemption–Camas Prairie
(continued...)

Grangeville Line was economically weak but that, contrary to protestants' claims, CSPR did not, at the time, consider abandoning the line. Applicant asserts that, upon acquisition, it began an intensive program designed to ascertain and meet customer needs. Among other actions, applicant says it increased service frequency over the line. Whereas its predecessor had operated over the line once a week on a regular basis, applicant began to operate on an as-needed basis, typically traversing the western half of the line two to three times a week and operating to the eastern end of the line (Grangeville) at least once a week.

CSPR currently serves 11 active shippers on the line. These include protestants LGG, Columbia, and Union Warehouse (shippers of grain, peas, and fertilizer); Shearer and U.S. Timber (lumber shippers); Atlas (a shipper of magnesium chloride); and Light & Power (a propane shipper). Also included are four shippers who have not submitted statements: Boyer Land & Cattle (fertilizer and peas); Idaho Lime Co. (aggregate); Lyman Dust Chemicals (magnesium chloride); and Lunders Logging & Trucking (logs).

CSPR primarily handles lumber and grains on the line. Its principal lumber shippers include Shearer and U.S. Timber, which are located at Grangeville and Craigmont, respectively. Shearer ships packaged lumber outbound to destinations served by BNSF or UP via interline service. U.S. Timber receives inbound shipments from connecting carriers and ships about 50% of its outbound products by rail. LGG, Columbia, and Union Warehouse are applicant's three principal grain shippers. LGG and Columbia maintain grain elevators at numerous points along the Grangeville Line. Union Warehouse's facilities are located at Grangeville and at nearby Fenn. CSPR handles traffic in interline or intra-railroad service. The latter service, which includes applicant's "shuttle grain" service, involves movement by rail between points on applicant's lines and the ports of Lewiston or Wilma, both in the Lewiston area, for transfer to barge for subsequent water movement.

Applicant asserts that its interline traffic is priced and marketed by either BNSF or UP. The amount applicant receives for each load is determined by its marketing agreements with the individual connecting carrier. Applicant contends that its commercial arrangements with its connecting carriers severely limit its ability to impose any sort of local charge or surcharge on top of the connecting carrier's rate. Applicant also asserts that its repeated attempts to negotiate

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[3](...continued)
Railroad Company, Union Pacific Railroad Company, and The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33558 (STB served Apr. 30, 1998).

The other three lines extend between Lewiston and Kooskia, ID (First Subdivision), between East Lewiston, ID, and Riparia, WA (Third Subdivision), and between Orofino and Revling, ID (Fourth Subdivision). The Grangeville Line joins the Kooskia-Lewiston Line at Spalding, approximately 10 miles east of Lewiston. As part of the acquisition transaction, CSPR obtained incidental overhead trackage rights over 15.1 miles of UP trackage between Riparia and Ayer, WA, for the purpose of interchanging traffic with UP and BNSF.

higher per-car rates with BNSF and UP have been unsuccessful. Applicant adds that intermodal competition and market conditions have limited its ability to raise rates on its intra-railroad traffic.

CSPR contends that, although its marketing efforts have resulted in significantly increased traffic levels, the Grangeville Line still does not generate sufficient local traffic to warrant its retention. There is no overhead traffic on the line, which is stub-ended.

Traffic and Revenues in General. For the forecast year, the 12 months beginning June 1, 2000,[4] CSPR initially projected 2,621 carloads, which would generate $877,944 in freight revenues. Applicant's projected increase in carloads is due mainly to a projected additional 520 carloads from U.S. Timber. Protestants, on the other hand, project 2,966 carloads, generating $1,018,629. The difference between the parties' figures for the forecast year is primarily the result of different carload projections for shippers LGG, Columbia, Union Warehouse, and U.S. Timber.

In its reply, CSPR amends its forecast year projections to reflect 2,718 carloads and $907,530 in freight revenues. It does so based on a comparison of protestants' projections and actual carloads handled during the first 6 months of 2000. For the 3 full months before the protests and reply were due (April-June 2000), in particular, CSPR shows that, whereas protestants projected 570 carloads, applicant handled only 437. Grain shippers LGG, Union Warehouse, and Columbia had projected 318 carloads for that time frame, but they tendered only 247. Applicant asserts that 2,600 is a more realistic figure for carloads to be moved during the forecast year, but, as noted above, it agrees to use the higher figure of 2,718, an increase of 97 from its original projection.

The parties differ in their projection of forecast year "other revenue and income,"[5] with CSPR and protestants projecting $167,896 and $182,309, respectively. The parties agree on the figures for land leases and easements. The protestants project greater income from demurrage and revenue equipment fees because they project greater traffic volumes than does the applicant.

Specific Arguments. Protestants contend that CSPR has failed to take full advantage of opportunities for increased traffic and revenues on the Grangeville Line. Grain shippers such as LGG maintain that it would be advantageous for CSPR to handle unit trains of 75 cars or more,

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[4] CSPR submitted revenue and cost data for both a base year, calendar year 1999, and a forecast year, the 12-month period June 1, 2000 through May 31, 2001. Because our analysis looks forward to determine whether the Grangeville Line will earn or, alternatively, lose money, we will focus chiefly on the forecast year figures offered by the applicant and protestants.

[5] Other revenue and income includes income from demurrage, revenue equipment, land leases and easements.

rather than moving the same number of cars in multiple train trips. Former CSPR general manager Wyatt believes that applicant can increase its share of revenues on such unit trains and other traffic interchanged with UP and BNSF. Mr. Wyatt asserts, further, that applicant could have followed through on negotiations with UP for local and overhead trackage rights between Ayer, WA, and Hinkle, OR (the latter a point on UP's main line). According to Wyatt, if applicant were to bring trains to that point, UP could efficiently move them to points beyond, and it assertedly might agree to a significant increase in applicant's revenue share on interline shipments.

Applicant responds that it had hoped to move an increased volume of grain over the Grangeville Line using the unit train concept but has handled only four unit trains since 1998. Applicant avers that LGG and Columbia told it that, in order to move unit trains to the Portland, OR/Vancouver, WA area, the carrier would have to provide a rate that was lower than the barge rate. Applicant has been unsuccessful in its attempts to negotiate competitive interline rates with both BNSF and UP. CSPR says that it still is negotiating with UP for a higher revenue split on interline traffic. Applicant, however, disputes the suggestion that UP would be willing to allow it to handle UP local customer switching on the UP line between Ayer and Hinkle. Applicant states that UP advised it that, because of labor issues, applicant would not be permitted to perform switching for any UP customers on the line. Applicant would be allowed only to move unit grain trains over the line. Applicant has found that such an operation would not be economical, in part because of the need to use extra train crews.

Several shippers have expressed a willingness to make concessions, such as shipping larger volumes by rail or paying higher rates for transportation. However, CSPR states that it has been informed that, of the approximately 7 million bushels of grain annually produced in the area served by the Grangeville Line, approximately 4 million bushels are farm-stored and trucked to the Lewiston port elevators. Applicant was told that the reason for this is that farmers can save 18¢ to 20¢ per bushel in elevator handling fees by trucking directly to the port. Thus, the railroad was told that it could attract some of this grain only through substantial rate reductions. According to applicant, when it proposed rate increases, grain shippers stated that higher rates would force them to divert rail traffic to truck.

Applicant indicates that it attempted to increase grain business by attracting a new shipper, Scoular Grain, to relocate to the area served by the Grangeville Line. After exploring sites for establishing a grain elevator and surveying producers, however, Scoular notified CSPR that, considering current market conditions, it would not be able to invest in a new facility.

Several shippers have asserted that grain carloadings were depressed in 1999 because of bad weather, but that the anticipated "bumper crop" for 2000 will result in higher carloadings. CSPR argues that a bumper year that follows a bad weather year does not necessarily translate into high carloadings. Applicant asserts that shippers usually are reluctant to sell their bumper year crop in one season for fear of depressing prices. Consequently, applicant asserts, the bad year-good year cycle takes several years to play out.

As another potential source of increased traffic, protestants point out that a company named Allwood Machinery has expressed an interest in locating a strawboard plant at Grangeville. A portion of the strawboard produced at the plant would be transported by rail. Applicant responds that the cited industrial development is speculative. Applicant presents a recent letter from Allwood to Lori Cox of the Grangeville Chamber of Commerce in which Allwood suggests that, "Before getting to the point of our involvement, we recommend you survey your local producers to be sure there is interest in providing straw for the mill, and the community to be sure they are willing to commit to the building and some funds."

Protestants argue also that the existence of the Grangeville Line fosters a number of tourist-related activities that benefit the railroad, the communities along the rail line, and the rural economy of the area. "Speeder car"[6] operators pay a railroad for the right to conduct excursions over its line. The persons involved in speeder car trips not only pay the railroad but also spend money in the region, benefitting the local economy. Protestants assert also that there is a market for dinner and/or excursion trains on the Grangeville Line. Protestants add that millions of visitors will be in the area during the Lewis & Clark Bicentennial Celebration between 2002 and 2006. Finally, protestants assert that motion picture production on the Grangeville Line is a source of revenue. CSPR assertedly was paid approximately $185,000 in compensation for use of its facilities for the filming of the motion picture "Wild, Wild West," and the local economy benefitted from the approximately $1 million that persons working on the film spent in the area during production.

Applicant replies that it allows speeder car trips over the entire CSPR rail system, not simply the Grangeville Line. Applicant earned $9,800 from one excursion in 2000 and has one more excursion scheduled for this year. Applicant emphasizes that the fact that there are 300 or more speeder car clubs does not directly translate into excursions over CSPR's lines. Similarly, applicant claims that only two movies have been filmed on its system in the last century and states that, in any event, the revenues the railroad earns are not exclusive to the Grangeville Line. Finally, applicant questions the marketability of a dinner train trip on the line. Applicant avers that it would take 5 to 6 hours to transport passengers from Lewiston to Craigmont or farther and return. The railroad also opines that the additional costs of increased track inspections, line maintenance, and liability would render passenger service unprofitable.

Summary of Traffic and Revenues. The applicant's projected revenues track closely with revenues the railroad earned on the Grangeville Line during 1999 and during the first 6 months of 2000. The protestants project a substantial increase in carloads. But they offer no evidence of

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[6] A speeder car is a motorized railroad maintenance car designed to operate over railroad lines. Individuals acquire and refurbish former maintenance cars and use them for excursions. There are approximately 300 recreational speeder car clubs in the United States. The club members transport their speeder cars in or on highway trailers to various rail lines for recreational outings.

any significant change, such as new shippers, new sources of traffic, or assurances of increased traffic, to support these projected increases. For these reasons, we believe that CSPR has met its burden of supporting its revenue projections and that the protestants' claims that traffic will substantially increase are not adequately supported by the record. We are therefore adopting the railroad's revised carload and revenue forecasts. And, for the same reason--because they also relate to volume-- we will accept applicant's "other revenue and income projections" of $167,896.

AVOIDABLE COSTS

Summary of Positions. Avoidable costs are costs CSPR will cease to incur if it abandons the line. Both CSPR and protestants submitted evidence of avoidable on-branch costs[7] for the forecast year. CSPR's and protestants' total avoidable on-branch costs for the forecast year are $1,050,785[8] and $589,277, respectively. The difference is chiefly due to CSPR's statement that the proposed abandonment will eliminate the use of two locomotives. Protestants argue that only one locomotive will be eliminated.

A substantial difference also exists between the parties' figures for off-branch avoidable costs. CSPR states that it expects to incur off-branch costs of $428,845[9] to provide service over the Grangeville Line. The protestants say that those costs will only come to $20,112. The difference between the parties' figures is due mainly to protestants' contention that CSPR has double-counted the costs of operating off-branch. Protestants argue that applicant uses the same locomotives and crews for on- and off-branch operations. CSPR disputes that claim, contending that it uses different locomotives and crews for on- and off-branch operations.

On-Branch Avoidable Costs

Maintenance-of-way and Structures. CSPR forecasts that it will have to spend about $200,400 per year to maintain the line, excluding the cost of maintaining the 43 bridges and trestles. The railroad projects that the cost of repairing the bridges will equal $185,000 per year and that the cost of maintaining the track that runs over the bridges and trestles will come to $86,382 per year, for total maintenance of $471,782 per year.

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[7] On-branch costs, as the name implies, are those incurred on the line proposed to be abandoned. Off-branch costs are those that would no longer be incurred if the line were to be abandoned, but which are incurred off the line.

[8] This figure is from CSPR's reply statement. CSPR originally projected $1,462,903 in avoidable on-branch costs.

[9] This figure is from CSPR's reply statement. In its application, CSPR projected $522,354 for off-branch avoidable costs.

The railroad bases its track maintenance costs (other than the track on the bridges and trestles) on "normalized" maintenance, which the railroad says is $3,000 per mile, which we have stated over the years, based on our experience and our expertise, is approximately the amount needed to maintain a typical rail line at FRA Class 1 standards. That is the minimum amount of maintenance required to permit trains to operate at 10 miles per hour. In supporting that the use of the $3,000 per mile annual maintenance figure is conservative, CSPR cites Board precedent where we accepted annual maintenance figures for Class III railroads such as CSPR that exceeded $3,000 per year. In particular, CSPR cites SWKR Operating Co.–Abandonment Exemption in Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997), which found that $6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad, and actually accepted a figure of $6,028.78 per mile. CSPR also cites Southeast Kansas Railroad Company–Abandonment Exemption in Montgomery, Labete and Cherokee Counties, KS, STB Docket No. AB-470 (Sub-No. 1X) (STB served Oct. 10, 1997) ($3,500 per mile); Minnesota Northern Railroad, Inc.–Abandonment Exemption–In Red Lake and Polk Counties, MN, STB Docket No. AB-497 (Sub-No. 1X) (STB served Nov. 14, 1997) ($5,821 per mile); and Minnesota Northern Railroad, Inc.–Abandonment–Between Redland Junction and Fertile, In Polk County, MN, STB Docket No. AB-497 (Sub-No. 2X) (STB served Nov. 14, 1997) ($4,864 per mile).

CSPR bases its projected maintenance expenses for bridges and trestles on a report prepared by the consulting firm of Parsons, Brinkerhoff, Inc. (the Parsons Report), which was commissioned by the La Salle National Bank in connection with the bank's loan for the purchase of the line by CSPR in 1998. The report analyzed the condition of the bridges and trestles on the line. The Parsons Report (minus appendices) is attached as Exhibit D to CSPR's application. The report provides a detailed analysis of the structures on the line. In discussing the Grangeville Line, described as the "2nd Subdivision," the report notes, at page 4,

> The 2nd Subdivision is the oldest subdivision on the CSPR. Many of the bridges were originally built in 1908 and some trestles were rebuilt in either the 1930's or 1950's. There are a total of 43 bridges. Of these, 25 are major crossings (length greater than 200 ft).

The Parsons Report concluded that annual maintenance costs for these 43 structures would be $271,382, broken down into $185,000 for the cost of maintaining the bridges and trestles themselves and $86,382 to maintain the track running over the bridges. These conclusions are supported by a detailed breakdown of unit costs for labor and materials, i.e., the cost of the labor and materials to undertake the individual work items (such as alignment, replace bulkheads, etc.) required as part of the necessary maintenance.

The protestants criticize CPSR's reliance on normalized maintenance. They say that the railroad should have provided actual data of maintenance performed in the base year, to permit a comparison with the railroad's forecast of maintenance costs. The protestants also criticize the railroad's reliance on the Parsons Report to forecast maintenance on the bridges. The protestants note that the Parsons Report is more than 2 years old and was not prepared for this case. In addition, the protestants say that the Parsons Report reflects rehabilitation expenses, not maintenance costs, and was not sponsored by a CSPR witness.

The protestants commissioned an expert to inspect the bridges and to prepare an estimate of annual maintenance costs based on that inspection. Protestant's witness Richard McDonald walked the line and noted that it was, overall, in good condition. Protestants support this statement by noting that 56 of the 67 miles of track meet FRA class 2 standards, which permit operation of up to 25 miles per hour. McDonald developed an annual maintenance figure of $171,575 for the base year by prorating the railroad's systemwide maintenance costs for 1999 of $628,480 to the Grangeville Line based on the ratio of the 66.8 miles in the Grangeville Line to the 245 miles that comprise CSPR's total system.

McDonald uses the $171,575 figure to verify his forecast annual maintenance figure of $225,030, including $100,200 for track maintenance plus $125,000 for bridge maintenance. McDonald shows a chart on page 6 of his verified statement to break down his figures (52 days labor for track, 62 days labor for bridges, foreman labor at $180 per day, trackmen labor at $150 per day) but does not show how he derived these figures. The track maintenance figure of $100,200 breaks down to approximately $1,490 per mile per year, a figure far below the level which our experience has shown is required to maintain a mile of rail line at FRA class 1 standards. The fact that the line is in good repair now means that CSPR need not spend money in rehabilitation, and the applicant has not claimed any costs to rehabilitate track. But it does not mean that the railroad may forgo normal maintenance. McDonald has cited nothing unique about this line that indicates that it could be maintained at costs far below those usually required. Indeed, in its reply CSPR notes that the Grangeville Line has a disproportionately higher maintenance requirement than the rest of the CSPR system due to the disproportionate number of bridges and trestles and the presence of the steepest grade on the system.

Protestants also take issue with CSPR's reliance on the Parsons Report. They note that the report predates CSPR's acquisition of the line and was prepared in March 1998, not for use in an abandonment case but rather to help a bank decide whether it was going to lend CSPR money to buy the line. Protestants point out that the FRA noted no exceptions to any of the bridges in the two inspections that that agency conducted after the issuance of the Parsons Report. The protestants note that the report's maintenance figures, were undercut by the report's statement at page 6 that "[t]he track structure for the bridges and their approaches was found to be in good to fair condition" and thus, according to protestants, were in compliance with FRA standards. Protestants reject the Parsons Report figure of $418,231 annual maintenance on the bridge itself, stating that the report did not compute actual repair costs, but rather based their cost on the cost of repairing one bridge–"Bridge 17"–in 1996.

A review of the Parsons Report does not support the protestants' criticisms. Nor does the record support the protestants' bridge maintenance figure of $125,010 per year, based on 62 days of labor, a figure unsupported by anything in the record.

The Parsons Report figures of $185,000 for annual maintenance and $86,382 for track are maintenance figures, not rehabilitation figures as protestants argue. The report does contain a rehabilitation estimate for the Grangeville Line. On page 14, under the heading "Short Term Capital Expenditure" the report noted stability problems on a number of the timber trestles, all of which are on the Grangeville Line (Bridges 17, 22, 30, 36, 38, 42, 48, and 50). The Parsons Report estimated that a total of $418,231 would have to be spent over the following 2-3 years.[10] The Parsons Report states that it derived its bridge maintenance and bridge track maintenance figures from the cost of repairing the bridges on the Second Subdivision–the Grangeville Line–for the 2 years prior to the preparation of the Report. Protestants have offered no criticism of the use of these historical maintenance costs for bridge and bridge track repair by CSPR. The Parsons Report stated that the following assumption (among other things) was made for its analysis of annual maintenance costs: "[t]he level of maintenance of the bridges will be kept to the standards now existing on the [Camas Prairie]." On the Second Subdivision, this was FRA class 1 or, at most, class 2.

Protestants argue that the Parsons Report envisions the replacement of every tie on the line, which would result in 100% non-defective ties, a standard far in excess of FRA class 1. The costs developed in the Parsons Report are based on replacing every defective tie on every bridge, but that would be done over a period of 10 years. During that period, other ties on the bridge would likely become defective and also need replacement. As a result, CSPR's replacement level will not produce 100% non-defective ties. Based on the height and curvature of some of the bridges, the condition of all bridge components is critical to the safe operation of the line. Accordingly, we accept CSPR's bridge structural maintenance costs.

Our restated forecast year maintenance-of-way cost for the line is computed as follows:

Track	$193,346[11]
Bridges, structural	185,000
Bridges, track	86,382
Total annual MOW cost	$464,728

[10] In developing the rehabilitation estimate, the Parsons Report cites repair work done to Bridge 17 in 1996, apparently the basis for the protestants' statement that annual maintenance–not rehabilitation–figures were based on that instance.

[11] We have deleted CSPR's normalized maintenance costs for bridge track to avoid double-counting those maintenance costs. The cost of repairing bridge track is taken from the Parsons Report.

Maintenance-of-Equipment (Including Depreciation) (MOE); Transportation; and General & Administrative. CSPR's revised forecast year total cost figure for these three items is $458,677; protestants' forecast year total is $282,868. According to protestants, CSPR's higher figure is based on the facts that applicant (1) has not followed the correct procedure for developing its costs, and (2) has included avoidable costs for two locomotives (and associated costs), when only the cost for one locomotive is avoidable.

Protestants argue that CSPR has failed to follow the Board's regulations at 49 CFR 1152.33 for developing on-branch avoidable costs for MOE, Transportation, and General & Administrative Expenses. Protestants note that these regulations establish specific requirements for developing on-branch costs for these items based on actual costs or, in certain permitted circumstances, an allocation of expenses based on actual branch line operating statistics. Protestants claim that CSPR has not used actual costs in the various categories in which actual costs are required, and has not used the appropriate statistic to allocate costs in those cases where allocation is allowed. Accordingly, IPUC and the Committee have moved to strike applicant's evidence in this area.

CSPR argues that the Board's regulations do not require a Class III applicant to use certain statistics for allocating system-wide costs where it lacks actual cost data. Applicant maintains that 49 CFR 1152.22(d)(1) requires presentation of branch line revenues and costs only to the extent such branch line data are available. CSPR maintains that the regulations protestants cite were promulgated with Class I railroads in mind.[12]

CSPR asserts that it has not kept the sort of statistics contemplated by the Board's regulations at 49 CFR 1152.33 (e.g., locomotive gross ton-miles, locomotive unit miles, and locomotive unit hours and rolling stock, motor vehicles, or crew costs) in a manner that allows them to be allocated to specific services. Applicant argues, however, that it is not required to do so. It claims that such a level of record-keeping would be onerous and expensive for a short line railroad with a limited office staff. Applicant states that, unlike Class I railroads, Class III railroads like itself are not required to and do not file statistical reports with the Board.[13] Thus, it asserts, there is no practical reason to collect that sort of information.

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[12] CSPR cites Abandonment Regulation - Costing, 3 I.C.C.2d 340, 355 (1987), in arguing that the ICC, in drafting the revised abandonment regulations, recognized that Class II and III railroads are not required to keep such data. However, the rules adopted in that decision pertained to off-branch costing and made no reference to on-branch costs.

[13] We agree that CSPR is not required to follow the same reporting requirements as Class I railroads. However, CSPR has not established that the data requirements established in 49 CFR 1152 for use in abandonment proceedings are connected to Class I railroad reporting requirements.

CSPR maintains that, had it been planning to abandon the line, as protestants suggest, it would have collected the statistics. It claims that if it were to engage in the sort of information collection advocated by IPUC, however, it would have to add at least one additional clerical person to its office staff at a cost of approximately $37,000 per year. CSPR states that protestants are probably correct in stating that it could go back after the fact and develop these statistics. However, it believes that would be a time consuming and expensive task and would, at best, merely result in an estimate.

CSPR states that percentage of total cars to on-branch cars is a "logical cost driver" to determine what assets or manpower would be avoided if the abandonment were granted. CSPR maintains that the collection of statistics called for by the regulations and protestants is unnecessary in any event because all of its pricing is on a per car basis.

Although protestants have demonstrated that CSPR has not followed the Board's regulation in allocating cost to the Line, they do not demonstrate or even argue that the railroad's cost allocation method inflates those costs. The total amount of the applicant's cost for these three items amounts to $458,677 out of which $218,739 is not based on any cost allocation methodology but represents 100% avoidable cost on the Line (labor and fringes associated with equipment maintenance and locomotive leases and locomotive crew wages and fringes). Therefore, the only cost at issue, which protestants argue has not been allocated or developed in accordance with the abandonment regulations, is $239,938, represented by freight car costs, fuel, supplies and general and administrative costs. We will reject those costs because they were not developed in accordance with our regulations and CSPR did not seek a waiver of those regulations.

Protestants argue that CSPR's inclusion of two locomotives rather than one in the computation of these items substantially overstates these costs. Protestants do not argue that the railroad did not use two locomotives on the line. Rather, based on the testimony of witness Plaistow, protestants argue that the railroad could provide the same service with one locomotive.

Plaistow's analysis is based on each locomotive being used three days a week. But, as the railroad noted on reply, each is used five days a week. Thus, two are necessary to provide the service. To accept the protestants' analysis, we would have to believe that the railroad needlessly doubled its locomotive costs on the Grangeville Line for over a year. We will not impute gross mismanagement or deliberate cost inflation without solid evidence of such behavior. The record affords no such evidence.

Freight Car Costs - Other than Return. CSPR in its application includes $62,505 in avoidable car-hire costs associated with the Grangeville Line for the base year and $77,975 for the forecast year and the projected subsidy year. These figures represent car-hire payments

CSPR made to other railroads for the use of their cars.[14] To obtain the forecast year and projected subsidy year figures, CSPR increased its base year figure ($62,505) by 24.75%, reflecting the anticipated traffic growth in the forecast year.

Protestants include $65,391 for freight car costs based on their estimate of base year traffic.[15] Protestants maintain that they cannot verify or refute CSPR's car-hire expense based on the evidence provided, and they accept CSPR's base year value modified to reflect protestants' carload figures.[16] Protestants include $70,732 for the forecast year. However, protestants do not explain, and we cannot determine from the evidence, how this number was developed.

On reply, CSPR states that it accepts protestants' slightly higher base year estimate, but it fails to make that adjustment in its revised exhibit.[17] CSPR continues to rely, without explanation, on its original forecast year estimate of $77,975, even though it has added an additional 97 carloads to its forecast year estimate.[18] To account for the increase in carloads which CSPR predicts, the car hire figure should be increased to $80,863 to reflect the additional 97 cars. But because CSPR does not claim this figure, we will include only the amount which the railroad does claim, $77,975.

Return on Value - Freight Cars. On reply, CSPR accepts protestants' cost for Return on Value - Freight Cars. Its revised exhibit provides a cost of $10,075 for the forecast year versus protestants' $10,647. Although CSPR provides no explanation for this inconsistency, we agree with protestants that CSPR has applied an incorrect "holding gain deflator." Protestants claim that, in calculating the holding gain deflator, CSPR has used the change in Actual Gross Domestic Product (GDP) between 1997 and 1998 (a 5.5% increase). Stated differently, CSPR

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[14] CSPR states that these figures come from calculations made from computer printouts generated by the car accounting system provided by Rail Car Management, Inc., a firm that performs car accounting functions for short line and regional freight railroads.

[15] Protestants' estimate appears to be developed by deriving a per carload charge of $29.75 and multiplying that figure by protestants' base year estimate of 2,198 carloads.

[16] According to IPUC, CSPR has not provided any car-mile or car-day information as required by the Board's abandonment regulations. However, we fail to see how car-mile or car-day information would improve over the actual cost incurred by CSPR for operations over the branch line.

[17] We note that CSPR includes $77,292 in its revised exhibit. However, the formula that CSPR uses to project forecast year cost ($62,505 x 1.2475) results in a cost of $77,975.

[18] Protestants, notwithstanding that they project a greater number of carloads on the line, have only estimated car hire costs in the forecast year to be $70,732.

has used the growth rate of the economy as a whole, not the change in the value of the dollar as called for by the abandonment regulations.[19] Therefore, we accept protestants' forecast year value of $10,647 for return on value-freight cars determined using the correct holding gain deflator.

Property Taxes. CSPR claims $32,959 for property taxes avoidable if the abandonment of the Grangeville Line is permitted. Applicant claims that the expense is totally avoidable inasmuch as it would dismantle and sell the track material and right-of-way if the abandonment were approved. With its application, CSPR has submitted a tabulation of its relevant 1999 Idaho property taxes, broken down by county, city, and parcel.

Protestants contend that applicant has not shown that any amount should be allowed for this asserted avoidable expense. Citing the Board's regulations at 49 CFR 1152.32(j), protestants assert that applicant has failed to provide the information the Board requires to support the expense. In its rebuttal, applicant, in a verified statement of its Chairman and Chief Executive Officer Robert F. McKenney, explains Idaho's assessment methodology and reiterates its claim that, following abandonment, real estate taxes would be reduced by $32,959. Protestants move to strike McKenney's rebuttal statement in this area. They argue that, as McKenney's explanation should have been presented with applicant's case-in-chief, and it does not rebut any facts asserted in protestants' statements, it is improper.

We will deny the motion to strike. Protestants have had an opportunity to reply to McKenney's statement and thus have not been injured by its late submission. Both applicant and protestants now have addressed this matter twice.

Section 1152.32(j)(3) requires that,

> In states where the ad valorem method is not employed, applicant must describe the applicable property tax methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual statewide tax savings attributable to the abandonment.[20]

McKenney explains the assessment methodology as follows. First, the State determines a "unit value" by appraising the value of all of the railroad's property, including all operating

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[19] See Abandonment Regulations - Costing, 5 I.C.C.2d 123, 124 (1988).

[20] Where the ad valorem method is used, property taxes are levied on the specific property being abandoned and disposed of. As seen from our discussion, a non-ad valorem method apparently is involved here.

property in as many states as the railroad operates.[21] Next, the State determines what portion of the total unit value lies within the State's borders, usually by pro-rating by route miles. Then, the State allocates its portion of the total unit value to the involved counties, cities, towns, districts, etc. Finally, each taxing jurisdiction applies its own rate to its allocated share. McKenney states that the railroad's pertinent 1999 taxes, which are payable in 2000, would have been avoided had the line been liquidated as of January 1, 1999.

Protestants tell us that Idaho centrally assesses property taxes on utilities. If the Grangeville Line were abandoned, the line would no longer be utility property, and the taxes thereon would no longer be centrally assessed. Rather, the counties in which the property is situated would assess taxes on the line (if it were not liquidated). The remainder of CSPR's utility property, however, still would be centrally assessed. Protestants assert that there is no way of knowing the magnitude of the property taxes that would be assessed on the remainder of CSPR's lines following abandonment, and that the railroad has provided no information that would help in making that determination. Taxes on the remainder of the railroad's utility property assertedly might increase or remain the same after abandonment.

We believe that applicant has satisfied its burden here by describing the State's methodology and providing a tabulation. Protestants have done nothing more than tell us that property taxes on utilities are centrally assessed, and that they do not know what property taxes would be assessed on the remainder of CSPR's lines following abandonment. We do not understand why the State could not have elaborated on its assessment methodology and explained why it could not calculate property taxes on the CSPR lines that would remain following an abandonment of the Grangeville Line.[22] We will allow the $32,959 as an avoidable expense.

Off-Branch Avoidable Costs

CSPR uses a forecast year off-branch cost figure of $428,845. Protestants present a figure of $20,112. CSPR calculated its off-branch avoidable variable costs for operating between Spalding and Lewiston/Ayer using the Board's Uniform Rail Costing System (URCS) in accordance with 49 CFR 1152.32(n)(4). Applicant states that it excluded all car rental expense from its variable costs because no car-hire costs were associated with the off-branch

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[21] To determine the unit value, the state uses various appraisal methodologies: "cost indicator," "income approach," and "stock and debt approach." CSPR's 1999 taxes were based 100% on the cost indicator appraisal method. This means that taxes were assessed solely on the sum of (1) the purchase prices actually paid, and (2) the capitalized value of the locomotive operating leases, adjusted for depreciation and functional obsolescence.

[22] Neither have protestants attempted to show that the property tax savings would not represent systemwide savings to the carrier. See 49 CFR 1152.32(j)(4)(i) and (ii).

portion. CSPR indicates that, to the extent any car-hire expenses were incurred, they were included in the on-branch costs.

Protestants agree with CSPR's exclusion of car-hire costs from off-branch costs. They maintain, however, that, with the exception of off-branch MOW costs, CSPR should have excluded virtually all off-branch costs. Protestants argue that, with the exception of MOW costs, CSPR has double counted costs by including the same costs in both the on-and off-branch costs. For example, protestants argue that CSPR considered avoidable all on- and off-branch costs associated with two locomotives and two crew members. Protestants maintain that, had CSPR followed the abandonment regulations and considered avoidable only the actual costs of operating the Grangeville Line, it would not have double counted these costs. Therefore, protestants include only MOW costs in their off-branch costs.

On reply, CSPR agrees that it did double count costs for part of the traffic that terminated on the CSPR at Lewiston, and it has corrected for this oversight.[23] CSPR's double count included costs for operating over the 8.8 miles between Spalding and Lewiston (of the total 93.9 miles to the UP/BNSF interchange). However, CSPR avers that its on-branch costs do not include the other off-branch costs that protestants wish to exclude. CSPR argues, for example, that, for this to occur, its two Grangeville line locomotives and crews would have to operate over the entire 93.9 off-branch miles. CSPR states that the locomotives used to service the Grangeville line cannot practically be shared with any CSPR operation or used on its other three branches.[24] According to CSPR, its operating plan never contemplated use of the Grangeville Line locomotives in any other service. Such other use would be impracticable because the substantial time required to traverse the line, switch the customers on line, and return to Lewiston leaves insufficient time to use those same locomotives to make a trip from Lewiston to Ayer and back or to serve customers on any other subdivision.[25] CSPR states that train crew salaries are based on a 50-hour week. Inasmuch as a normal week on the Grangeville Line consumes most of those 50 hours, CSPR may use its Grangeville Line employees on some other assignment only to the extent they have time still available. CSPR claims, however, that it seldom has the opportunity to do so and at times needs additional personnel.

Protestants have not shown that CSPR's two locomotives and crews could provide both on- and off-branch service. Therefore, there is no double count of costs. We believe that

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[23] The net change to eliminate double counting is approximately $88,000 in the base year and $94,000 in the forecast and subsidy years.

[24] According to CSPR, the locomotives and crews serving the line operate only to Lewiston Yard, 8 miles from the beginning of the line at Spalding. Different locomotives and crews then handle the cars to interchange with UP or BNSF at Ayer.

[25] CSPR provided a detailed description of its operations.

CSPR's explanation of its on- and off-branch operations demonstrates its need for and utilization of the locomotives, crew, and other associated items both on- and off-branch. Thus, we accept its characterization of its service requirements and avoidable off-branch costs.

SUBSIDIZATION COSTS

Subsidization costs are comprised of rehabilitation costs, administrative costs, and casualty reserve account payments. CSPR presents figures of $418,231, $10,754, and $0, respectively, for these three items. Protestants argue that no costs should be allowed for these items.

Rehabilitation costs are allowed only if track fails to meet FRA class 1 safety standards. Because the line meets or exceeds FRA class 1 standards, no rehabilitation of track is required. However, CSPR includes $418,231 for rehabilitation of bridges, which is supported by the Parsons Report, providing a detailed inspection of the bridges. The Parsons Report notes that it was not possible to estimate exactly what would be required or when repairs would occur. CSPR initially included this cost in its MOW expense estimate, but removed it in its reply statement, including it instead as rehabilitation in its cost analysis.

While we recognize that CSPR's bridge rehabilitation cost is well documented, its immediate need is not. The Parsons Report states that the estimated repair costs might be incurred sometime in the future. Rehabilitation, in the sense of an abandonment, is intended to enable the line to meet certain minimum standards of operation in order to preserve service. See 49 CFR 1152.32(m).

Based on the evidence submitted, we find no indication that the bridges are at or below minimal condition for operation. Indeed, inspection reports and most descriptions indicate that the bridges are in relatively good condition, albeit requiring constant repair typical of wood trestles. As a result, we do not include bridge rehabilitation or administrative costs associated with that rehabilitation in our restatement in the attached table.

OPPORTUNITY COSTS

Opportunity costs (or total return on value) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations - Costing, 3 I.C.C.2d 340 (1987), the opportunity costs of road property are computed on an investment base that is the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base, also called the "valuation of road properties," is then multiplied by the nominal rate of return, which, as discussed below, is 15.8%. The resulting figure, the nominal return on value, is then adjusted by applying a holding gain (or loss), which is the increase or decrease in value that a carrier will expect to realize by holding assets for 1 additional year.

In its reply statement, CSPR submitted data for the forecast year showing the value of the road property to be $1,808,162, consisting of an NLV of $2,660,400, income tax consequences of ($895,007), and working capital of $42,769.[26] Protestants submitted data for the forecast year showing the value of the road property to be $779,876, consisting of an NLV of $1,032,503, income tax consequences of ($276,406), and working capital of $23,779.

Net Liquidation Value (NLV) - Track Materials. CSPR presents detailed evidence in support of its NLV for track materials. Its unit costs are based on market quotes, quotations from national rail suppliers, and past experience. The unit price for scrap metal is based on prices published in the American Metals Market, reflecting prices as of March 20, 2000, and July 7, 2000. CSPR adjusts its material quantities for recovery cost, waste, and wear.

CSPR estimates removal costs to be about $12,000 per mile, including resurfacing of all public crossings and rough grading of the roadbed. Transportation costs for scrap material are included. Applicant submitted a detailed cost development for our review.

Protestants use significantly lower unit prices for reusable and scrap track material, but they do not indicate the source of these unit costs. However, they use the same unit prices as CSPR does for reusable steel ties and relay wood ties. Protestants exclude track material value for 18 miles in the Lapwai Creek area. They contend potential salvage problems will result in costs that exceed the value of track materials in that part of the line. Like CSPR, protestants assume that the bridges would be dismantled and have no net salvage value.

Although CSPR's unit prices for rail and other track material (OTM) appear high, they are from a generally accepted source, American Metals Market. In contrast, protestants neither support nor discuss their unit prices. Further, they do not criticize CSPR's unit prices. As a result, we will accept CSPR's unit prices for scrap and fit track material.

The parties agree on the price for reusable steel and wood ties. CSPR's price for landscape ties is $2.00 each; scrap ties are priced at $1.00 each. Protestants do not discuss the unit price for landscape and scrap ties. CSPR uses a uniform price of $2.00 per tie for removal costs. We will use CSPR's tie prices as the only available information for all tie classifications.

CSPR's cost to remove track materials is $12,000 per track-mile, which is higher than we usually see. Figures above about $10,000 per track-mile generally indicate some out-of-the-ordinary condition such as a high number of grade crossings, bridge removal requirements, or restricted right-of-way clearances in built-up areas. Protestants use a considerably lower

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[26] This is slightly lower than the $1,825,277 figure in CSPR's opening statement. The difference is due entirely to a change in the working capital allowance (which represents 15 days of on-branch cash operating expenses) resulting from reductions in on-branch avoidable costs.

removal cost and also eliminate some trackage along Lapwai Creek based on possible environmental considerations. However, they do not discuss the source of their costs, nor do they criticize CSPR's costs as being inappropriate. As a result, we will use CSPR's removal costs for rail and OTM.

CSPR presents the only information regarding transportation of track materials to various markets. Protestants neither discuss nor criticize CSPR's estimates. Transportation is an appropriate cost to include because the railroad is located some distance from scrap markets. As a result, we will use CSPR's transportation costs.

We recognize that environmental issues will be involved and that a probable cost will be incurred. However, no estimate has been submitted for the Lapwai Creek section of the line other than protestants' estimated cost for biological and engineering studies included as part of the cost of land sales. Protestants assume that either the environmental mitigation costs are sufficient to offset the net value of the track materials or that the track could not be removed at all. In our view, these assumptions do not warrant assigning zero track salvage value to this line segment, as protestants would have us do. Increased salvage costs due to environmental mitigation requirements should be included as part of removal costs. We accept CSPR's net salvage value of $1,826,823 for track materials.

Net Liquidation Value (NLV) - Land. CSPR's land area is developed from valuation maps. Applicant develops its appraisal using Across-the-Fence (ATF) methodology, which reflects the market value of land abutting the subject property without any consideration for the unique physical characteristics of the right-of-way. Detailed costs are developed for each valuation map segment using ATF values derived from recent sales in the area. CSPR uses a 6% cost of sales. It does not consider taxes, engineering studies, or environmental assessments separately. CSPR uses a 5-year sell-off period and a 14% discount rate.

Protestants also submit a detailed land appraisal in support of their position, using the ATF method as a starting point. Costs are developed from each valuation map using ATF values from recent sales in the area. Cost of sales, title, closing, marketing, and management are estimated at 10%. Taxes during the disposal phase are estimated to be 1%. Engineering and biological studies prior to salvage are estimated at $25,000, or $5,000 per year during the 5-year sell-off period. Protestants use the same 14% discount rate and 5-year sell-off period as CSPR.

CSPR does not present an effective rebuttal of protestants' allegations regarding non-marketable title. For instance, the railroad observes: "The complex interrelationship of federal, railroad, and Indian property rights makes it extremely difficult to say what property rights the railroad has on the Nez Perce Reservation."[27] Nonetheless, CSPR assumes that the right-of-way within the reservation has marketable title. On the other hand, protestants state, "There is no

[27] Rebuttal verified statement of Professor Danaya C. Wright, at p. 4.

complete narrative legal description for the rail line in question, and issues of title, while adjusted for, cannot be determined with accuracy lacking title reports on a parcel by parcel basis."[28] The U.S. Department of Interior, Bureau of Land Management (BLM) states, "We believe more research may be necessary to verify the amount of right-of-way (ROW) owed in fee."[29] As a result, on the evidence submitted, we cannot determine which parcels are reversionary and which are not. We will therefore use the protestants' land value in our restatement. In order to develop an appropriate assessment of land value, we must ascertain title quality for each parcel of the right-of-way. Without knowing what CSPR owns, we cannot accurately estimate any land value for purposes of NLV. Even using protestants' land value, the line shows an avoidable loss.

We will use CSPR's figure of $75,400 for salvage value of freight cars, as it is undisputed.

Net Liquidation Value (NLV) - Conclusion. Our restated NLV for the line is computed as follows:

Gross salvage value - track	$3,448,247
Cost to remove	(1,311,828)
Transportation	(309,596)
Net salvage value - track	$1,826,823
Protestants' land value	255,000
Freight cars	75,400
NLV	$2,157,223

Income Tax Consequences. CSPR computes income tax consequences for the forecast year as $895,007. This represents the tax consequences (at a rate of 38%) of a gain on sale of property equal to $2,355,282. This figure results from the net proceeds from track disposal ($1,827,000), plus the net profits from sale of land ($758,000 NLV of land, less $238,170 book value of land, for a net of $519,830), plus the net value of freight cars sold ($75,400 NLV less $66,948 book value, for a net of $8,452).

Protestants have recalculated the income tax consequences to be $276,406. This represents the tax consequences (at a rate of 38%) of a gain on sale of property equal to $727,385. This figure results from the net proceeds from track disposal ($702,103), plus the net profits from sale of land ($255,000 NLV of land, less $238,170 book value of land, for a net of

[28] Verified statement of Mr. Morse, at p. 32.

[29] BLM protest, at p. 3.

$16,830), plus the net value of freight cars sold ($75,400 NLV less $66,948 book value, for a net of $8,452).

Based on our restatement of NLV, we have recalculated the income tax consequences to be $703,800. This represents the tax consequences (using the 38% rate accepted by both parties) of a gain on sale of property equal to $1,852,105. This figure results from the net proceeds from track disposal ($1,826,823), plus the net profits from sale of land ($255,000 NLV of land, less $238,170 book value of land, for a net of $16,830), plus the net value of freight cars sold ($75,400 NLV less $66,948 book value, for a net of $8,452).

Working Capital. The abandonment regulations call for working capital equal to 15 days of avoidable on-branch costs (less depreciation and return). In its reply statement, CSPR computes working capital for the forecast year to be $42,769, based on total on-branch avoidable costs (less return) of $1,040,710.[30] Protestants compute working capital for the forecast year to be $23,779, based on total on-branch avoidable costs (less return) of $578,630.[31]

We have computed the working capital allowance to be $32,647, based on total on-branch avoidable costs (less return) of $794,401, the costs we have noted, above, to be supported by the record.[32]

In its opening statement, CSPR developed a nominal pre-tax cost of capital of 15.91% (rounded to 15.9%) in its Exhibit L. Protestants used a slightly lower 15.8% figure. On reply, CSPR also used the 15.8% figure. We will use the 15.8% figure.

Return on Value. The opportunity costs (before holding gain) developed by CSPR in its reply statement are $286,233,[33] obtained by multiplying its valuation of property ($1,808,162) by 15.8%.[34] Protestants' figure of $123,220, is based on multiplying its value of property ($779,876) by 15.8%. We have recomputed the opportunity cost (before holding gain) to be $234,799 based on a revised valuation of property of $1,486,070 (consisting of $2,157,223

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[30] This is computed by subtracting $10,075 on return-on-value, freight cars, from total on-branch costs of $1,050,785. There is no depreciation expense shown.

[31] This is computed by subtracting $10,647 from return-on-value, freight cars, from total on-branch costs of $589,277. There is no depreciation expense shown.

[32] This is computed by subtracting $10,647 for return-on-value, freight cars, from total on-branch costs of $805,048. There is no depreciation expense shown.

[33] By our calculation, the correct product is $285,690.

[34] In its opening statement, CSPR computed opportunity costs (before holding gains) of $290,456.

NLV, ($703,800) income tax consequences, and $32,647 working capital) and a 15.8% rate of return.

Holding Gain. Holding gains represent the increase in asset value that occurs during the forecast year due to inflation. Inflation is determined by using the Gross Domestic Product Implicit Price Deflator (GDP), developed by the Bureau of Economic Analysis.[35] In its opening analysis, CSPR computed a holding gain of $219,025,[36] by multiplying its NLV ($2,660,400) by a factor of 8.23%. Protestants computed a holding gain of $15,488 by multiplying their NLV ($1,032,503) by 1.5%. In its reply statement, CSPR developed a holding gain by subtracting a computed real cost of capital from the nominal cost of capital. When applicant multiplied its NLV of $2,660,400 by this number, 2.3%, it calculated a holding gain of $61,138.[37]

Holding gains are designed to offset the rate of return that a company could get by selling its assets and using the proceeds elsewhere (i.e., its opportunity cost). To the extent assets increase in value due to inflation, holding gains are subtracted from the rate of return available for using the proceeds of the asset sales elsewhere. CSPR developed a real cost of capital and subtracted it from the nominal cost of capital. This resulted in CSPR's overstating its holding gain and understating its return on value (opportunity cost). Protestants have used the correct GDP figure for 1999, as reported by BEA on its website (www.bea.doc.gov). Use of the 1.5% inflation factor to account for holding gains approximates the offset due to inflation. Based on our revised NLV figure of $2,157,223, and using the 1.5% factor, we have determined that holding gains are $32,358.

SUMMARY OF COST AND REVENUE EVIDENCE

Based on the above analysis, our restatement of the cost and revenue evidence shows that, for the forecast year, total revenue attributable to the subject line is $1,075,426. Net avoidable costs of $1,233,893 result in a forecast year operating loss of $158,467. When opportunity costs are considered, avoidable losses are $360,908. Because there are no rehabilitation costs, the estimated subsidy payment would be the same as the avoidable losses, including return on value. We note, moreover, that these projected losses have been calculated conservatively because we have rejected CSPR's cost allocations for three on-branch cost categories which the railroad would incur some additional costs that we have not included in our calculations of forecast year costs.

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[35] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis.

[36] By our calculation, the correct product is $218,951.

[37] By our calculation, the correct product is $61,189.

ALTERNATIVE TRANSPORTATION

As previously noted, CSPR operates lines other than the Grangeville Line in the Camas Prairie Region. Applicant's First Subdivision generally lies some 30 miles to the east of the Grangeville Line and runs between Kooskia and Lewiston, via Spalding, the northern terminus of the Grangeville Line. Applicant's Third Subdivision runs between East Lewiston and Riparia, WA, to the west. Applicant also cites the availability of service via BNSF, UP, and shortline carrier Palouse River and Coulee City Railroad, all in Washington.

The area is served by U.S. Highways 95 and 12. Highway 95 generally parallels the Grangeville Line all the way from Grangeville to Spalding and runs beyond to Lewiston, where it turns north. CSPR characterizes Highway 95 as a modern, well-maintained, two-lane road. Highway 12 parallels the First Subdivision from Kooskia to Lewiston and runs beyond to the west. Applicant names eight motor carriers based at Grangeville, Lewiston, and Clarkston, WA, and it avers that these carriers, as well as other independent carriers, are available to serve the line's shippers.[38]

CSPR asserts that each of its customers on the line already makes extensive use of alternative transportation. Applicant notes that the bulk of its traffic consists of grain moving to ports for further movement by water, and that a substantial amount of its traffic consists of lumber moving to interchange with UP and BNSF. In the absence of its service, applicant asserts, its shippers would likely use truck transportation to move their grain to ports or their lumber to the nearest rail head.

SHIPPER AND COMMUNITY INTEREST

As previously noted, seven shippers have submitted statements in opposition to the application. In addition to challenging applicant's evidence regarding traffic volumes, costs, and revenues, the shippers detail the adverse effects they anticipate suffering in the event of a loss of direct rail service.

LGG claims that increased costs associated with transloading barley from truck to rail would make it non-competitive with suppliers that would continue to enjoy direct service, its malt barley contracts would be jeopardized, and it would stand to lose $150,000 per year in revenues related to malt barley sales. This shipper asserts also that it would incur increased costs of approximately $20,000 per year and $13,000 per year, respectively, on its outbound wheat shipments and its inbound fertilizer shipments. LGG further asserts that abandonment

[38] These motor carriers are: Baker Truck Lines, Baker Truck Service, Richardson Trucking Inc., Dean Rowan Trucking, Eagle Transfer/Trinaco, Inc., 3 B's Transportation Co., Swift Transportation Co., Inc., and USF Reddaway.

could cause it to close elevators on the Grangeville Line, most likely its elevator at Reubens, ID, which has a value of $15,400. The shipper adds that its rail-loading facility and locomotive at Craigmont, worth nearly $93,000, would be rendered obsolete.

U.S. Timber indicates that, if it were to use the truck-rail center at Lewiston as an alternative, it would incur increased costs of approximately $900 per carload-equivalent, or a total of approximately $648,000 in added costs per year based on its forecast year volume of 720 cars. It avers that competitive conditions in the lumber industry would force it to absorb those increased costs and would jeopardize the continued existence of its Craigmont mill. If it were to close that mill, the shipper asserts, the investment of approximately $400,000 it made in 1999 to rebuild the mill would be lost. Moreover, the mill employs 18 persons who would be affected in the event it closed.

CSPR replies that it has had discussions with LGG and U.S. Timber in attempts to mitigate the adverse effects of abandonment. Applicant asserts that LGG has stated that abandonment would lead to increased costs, not to plant closures. CSPR avers that it has been working with U.S. Timber to establish a new reload center near Lewiston, at North Lapwai. Applicant believes that real estate for the new center already has been leased to the shipper. CSPR asserts also that this shipper has indicated that, in the event of an abandonment, its mill would remain in operation. U.S. Timber also assertedly stated that it was working with UP and BNSF for additional allowances to defray the costs of trucking to and from the existing Craigmont reload center.

Union Warehouse avers that, in the event of abandonment, it would move wheat by truck to Lewiston at increased freight costs that it would be forced to try to pass on to its farmer-customers. However, if its competitors tried to absorb the increased costs, it asserts, it would be forced to do so as well, at a cost of $25,000 or more. Shearer Lumber indicates that, if the rail line were abandoned, shipments formerly moved by rail from Grangeville would have to be transloaded from truck to rail at an off-line point. The extra costs for trucking and transloading, it asserts, would amount to approximately $100,000 per year. Competitive conditions in the lumber business assertedly would force Shearer to absorb the additional costs. Atlas believes that its increased costs of using truck transportation as an alternative to rail would be $12,150 per year. Additionally, Atlas avers, the higher costs of truck service would in fact prevent it from successfully bidding on road projects and would result in lost business. Shippers Columbia and Light & Power indicate that they would face increased transportation costs, but would try to pass them on to their customers.

The Idaho Grain Producers Association (IGPA), the Idaho Farm Bureau Federation, and the Idaho Barley Commission are among the parties who maintain that the loss of rail service would cause significant economic harm to producers of grain, particularly barley, in Lewis, Nez Perce, and Idaho Counties. With grain prices at or near historic lows, protestants assert, family farmers in the area of the Grangeville Line cannot afford further reductions in price that would occur when grain elevators pass along the effect of increased transportation costs. Protestants point out that malting barley contractors require that barley be shipped to them by rail. If the Grangeville Line were abandoned, they note, barley produced in the area would have to be transloaded from truck to rail at an off-line point. The added costs might threaten the future profitability of malting barley production in the region and leave barley producers with one less production option in an already stressed farm economy. IGPA states that grain elevators and grain producers in the area have been investigating ways to divert wheat from truck-barge transportation via Lewiston to rail transportation to Lewiston or points beyond. IGPA avers that area grain producers are committed to serious negotiations with the railroad and grain companies to increase the profitability of operating the Grangeville Line.

CSPR disputes allegations that an abandonment could result in barley shippers' losing markets or being forced out of business. Applicant points out that barley is trucked to grain elevators, and that farmers still would have to truck their barley in the event of an abandonment. They simply would have to travel to different elevators, on other rail lines, including applicant's lines. Applicant asserts that additional trucking of up to 30 miles, and modest additional costs, may be involved, but receivers still would get their product by rail, and no one would lose markets or be forced out of business.

Governor Kempthorne, the Idaho Department of Commerce (IDC), the Grangeville Chamber of Commerce, and the Clearwater Economic Development Association (CEDA) are among the protestants who present evidence concerning the general negative economic impact the region would suffer as a result of a loss of rail service. Protestants point out that the area is economically distressed, with the Lewis County and Idaho County unemployment rates of 7.7% and 9.2%, respectively, being far higher than the state and national unemployment rates. Protestants fear that a loss of rail service would translate into lost jobs in both the agricultural and manufacturing areas. IDC avers, moreover, that loss of the Grangeville Line would make it increasingly difficult for economic development entities to develop or recruit new manufacturing and service operations in the affected rural area.

Numerous protestants, including the Sierra Club, the City of Winchester, CEDA, and IDC note that the Federal government is considering partially removing four dams on the Lower Snake River, west of Lewiston. If the government were to take the proposed action, the barge waterway between Lewiston and the confluence of the Snake and Columbia Rivers would allegedly be closed. The rail-barge shipping alternative would thus be lost. Protestants question the advisability of permitting this abandonment in a setting in which a transportation option might be lost and rail capacity might be constrained.

A number of protestants also express concern over the impact on the public roads that would be occasioned by an abandonment. The North Central Idaho Travel Association, the City of Grangeville, CEDA, and IDC are among the protestants who raise this matter. Protestants estimate that the shift from rail to truck transportation would add 10,000 to 18,000 truck trips a year to Highway 95 between Grangeville and Lewiston. The preponderance of the truck transportation would occur during the fall harvest season. Protestants assert that Highway 95 cannot safely accommodate the additional truck traffic as it is a narrow, winding, mountain road. Protestants add that not only public safety, but also highway and bridge maintenance costs would be affected. Consultant Tolliver of the Upper Great Plains Transportation Institute estimates that annualized incremental highway costs resulting from the additional traffic could amount to $187,000 to $213,000.

Protestants including CEDA and the Ilo-Vollmer Historical Society highlight the historic value of the Grangeville Line. The latter protestant points out that the construction of the line was one of the most impressive engineering achievements of its time. The construction of the Lawyers Canyon Bridge, in particular, has been deemed a significant accomplishment in the history of bridge engineering.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926).

The Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service. This involves a question of whether, and to what degree, shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur harm and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. Protestants must show that the harm to shippers and communities outweighs the demonstrated harm to the railroad and interstate commerce resulting from continued operation. See Chicago and North Western Transp. Co.–Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment or discontinuance application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including rehabilitation and economic costs), and the effects on shippers and communities. No one factor is conclusive. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g, en banc, 735 F.2d 1059 (8th Cir. 1984).

Here the factors weigh in favor of a grant of the application. The record shows that continued operation of the line would impose a substantial economic burden on CSPR. The forecast year operating loss for the line is $158,467, while the forecast year avoidable loss, including return on value, is $360,908.

Protestants have argued that CSPR considered the Grangeville Line a candidate for abandonment from the start and has not actively worked to make the line profitable. The evidence does not support these claims. Applicant has described the manner in which it operates over the line and integrates the operations into its systemwide service. It has shown how it has been more accommodating to its shippers than was its predecessor. It has explained its efforts, albeit unsuccessful, to negotiate higher rates or increased volumes with the line's shippers and increased revenue shares with connecting carriers UP and BNSF. It has discussed its inability to raise rates on its intra-railroad traffic due to intermodal competition and market conditions. Finally, applicant has described efforts to increase the line's carloads.

On the other hand, protestants have not shown that applicant's operations are inefficient or unaccommodating. They have not established that CSPR's negotiations and efforts have been other than as it has characterized them. And, significantly, they have not established that carloadings can be expected to increase to substantially higher levels in the foreseeable future. Their projections for the current year are not bearing out. Also, as seen, protestants' suggestions of various avenues for increased revenues -- including speeder car excursion fees, passenger transportation fares, and rentals to movie makers -- are not supported by evidence that those things will or are reasonably likely to happen. We believe that the record shows that CSPR has made reasonable efforts to operate the Grangeville Line profitably, but that applicant cannot realistically anticipate being able to do so.

The record does show that CSPR's shippers and the communities applicant serves would suffer adverse effects in the event of an abandonment. But we think protestants have overstated these effects. For instance, shippers have decried having to use motor carrier service as an alternative; yet, as discussed, the area's shippers make heavy use of truck transportation. Malt barley shippers have claimed that their grain must be delivered by rail, not by truck. But these shippers already truck their product to elevators on rail lines and would have to continue to do so in any event. Also, U.S. Timber has claimed that the existence of its Craigmont mill would be jeopardized, yet applicant appears to be working with this shipper to establish a new reload center near Lewiston.

Shippers have almost uniformly complained that their transportation costs would increase on abandonment, and that they would have to absorb the increases or attempt to pass them on to their customers. But, according to applicant, some shippers have balked and threatened to divert traffic to motor carriage when it sought rate increases. Shippers cannot expect the railroad to subsidize their business operations.

A number of protestants have referred to a pending proposal in which the Federal government would partially remove four dams on the Snake River, and they have questioned the advisability of permitting abandonment in a setting in which the barge transportation option would be lost and rail capacity might be constrained. The possibility that the dams might be removed in the future is too speculative for us to attempt to consider it as a factor in this proceeding.

Numerous protestants have also expressed concern over the impact on the public roads that would result in the event shippers switched to motor carrier service following an abandonment. Protestants have offered only a broad range of 10,000 to 18,000 as the number of annual truck trips they project will be added to Highway 95 between Grangeville and Lewiston should there be an abandonment.

The Board's Section of Environmental Analysis (SEA) has determined that the potential increase in average daily traffic (ADT) from the diversion of all rail traffic to all truck traffic on any affected section of Highway 95 would be minor and would not result in significant air quality impacts to the region. SEA has noted that any increase in truck emissions would be offset somewhat by the loss of train related emissions. SEA also has determined that no significant impacts on traffic and safety would occur as a result of an abandonment. Under a worst case scenario, estimated seasonal increases in truck traffic at Spalding would result in a 2.4% increase in total ADT on the involved section of Highway 95, and all new truck traffic would quickly dissipate once it passed Spalding. Notably, SEA also has found that abandonment would result in the removal of 113 highway/rail at-grade crossings, which would likely reduce the number of accidents that might otherwise occur.

On balance, we conclude that any harm to shippers and the community from the abandonment of service over the line is outweighed by the demonstrated harm to CSPR and the burden on interstate commerce through continued operation of the line. While we are not unsympathetic to the concerns of protestants, we cannot, under the law, require a carrier to continue operating a line at a substantial loss and with few, if any, concrete prospects for additional future traffic. For these reasons, we will grant the abandonment application.

We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator. Should protestants or any other interested parties determine that continued rail service over the line is in their best interest, they may avail themselves of the section 10904 procedures.

LABOR PROTECTION

In approving this abandonment application, we must ensure that rail employees are protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions here.

ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. CSPR submitted an environmental report with its application 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 abandonment. See 49 CFR 1105.11. A number of agencies and the City of Cottonwood responded. SEA has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 28, 2000, and requested comments. Comments were filed by CSPR, the State of Idaho, the Nez Perce, and BLM.

The National Marine Fisheries Service voiced concerns about impacts to the steelhead trout and its critical habitat found in Lapwai Creek and its associated tributaries. SEA therefore recommended that the railroad not salvage or dispose of the right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531. The U.S. Department of Commerce, National Geodetic Survey (NGS), expressed concerns about 23 geodetic station markers listed in CSPR's Environmental Report. In response, SEA recommended that, if salvage operations are expected to destroy or disturb any of the geodetic station markers, the railroad notify NGS not less than 90 days prior to commencement of such operations. SEA also noted the rail line's potential historic value, the concerns of the Idaho State Historic Preservation Officer, and the rail line's importance to the Nez Perce and the potential impacts from abandonment and salvage of the rail line to the Nez Perce. Accordingly, SEA recommended that the railroad retain its interest in and take no steps to alter the historic integrity of the rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. The City of Cottonwood, located on the Nez Perce Reservation, expressed concerns regarding the impact of salvage activities on existing highway/rail at-grade crossings. In response, SEA recommended that the railroad consult with the City of Cottonwood's Highway Engineer prior to conducting salvage activities at or near grade crossings.

The U.S. Environmental Protection Agency (EPA), Region 10, voiced concerns regarding the discharge of stormwater resulting from the disturbance of more than five acres. As a consequence, SEA recommended that the railroad consult with the EPA and secure all necessary permits prior to initiation of salvage or disposal activities. The Idaho Department of Environmental Quality (ID-DEQ) and the Nez Perce raised concerns regarding storm and surface water discharge and potential soil and erosion problems resulting from salvage activities to Lapwai Creek, which is listed as water quality impaired pursuant to section 303(d) of the Clean Water Act. In response, SEA recommended that the railroad: (a) consult with the ID-DEQ and the Nez Perce regarding development of a Track Salvage and Stream Restoration Work Plan (Work Plan), submit the Work Plan to ID-DEQ and the Nez Perce for their review, design the Work Plan to protect stream habitats during any salvage activities to restore in-stream habitats, including the use of best management practices, and address in the Work Plan disposal of cross ties and timbers which may have been treated with creosote or pentachlorophenol, both of which are considered toxic; and (b) obtain from ID-DEQ all required discharge permits and plans to prevent hill/slope mass wasting prior to initiation of salvage or disposal activities.

In its comments, BLM raised various concerns. To address them, SEA recommended that the railroad: (a) consult with BLM to eradicate all noxious or non-native weeds prior to abandonment, consult with BLM regarding the application of approved herbicides to all non-native weed infestations and the seeding and mulching of all disturbed areas with native vegetation, and maintain responsibility for weed control and successful revegetation program as long as the right-of-way remains under CSPR's ownership; (b) provide adequate certification to BLM that the right-of-way contains no hazardous substances that are subject to provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, and the Resource Conservation and Recovery Act of 1976, as amended; and (c) if the right-of-way is not converted to any other public use, take reasonable measures to dismantle or seal all trestles, bridges, and tunnels in a manner that will make them inaccessible to the public.

We agree with SEA's recommendations and will impose them. Based on SEA's recommendations, we conclude that the abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

TRAIL USE

The Nez Perce request issuance of a CITU pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to enable them to acquire the entire line for recreational use. The Nez Perce have submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service, as required under 49 CFR 1152.29. By a supplement to its reply, filed August 2, 2000, CSPR states that it is willing to negotiate with the Nez Perce. Because the Nez Perce's request complies with the requirements of 49 CFR 1152.29, and CSPR is willing to enter into negotiations, we will issue a CITU. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSPR may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and certificate will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(1). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the abandonment application will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

Ted and Regina Kaschmitter, who own land on both sides of the railroad right-of-way, oppose use of the right-of-way as a recreational trail. The Kaschmitters are concerned over problems that might be caused by malicious or mischievous trail users.

Our role in administering the Trails Act is only ministerial. We do not decide whether rail banking and use of the right-of-way as a recreational trail is desirable for a particular line of railroad; Congress has made that determination (for all lines). See 16 U.S.C. 1247(d), and, e.g., Kansas Southwestern Railway L.L.C.–Abandonment–In Sumner, Harper, Barber, Reno and Kingman Counties, KS, STB Docket No. AB-437 (Sub-No. 1) (STB served June 10, 1999). As here, if the railroad agrees to negotiate with a party for the acquisition of the right-of-way for rail banking/interim trail use, and that party meets the requirements of 49 CFR 1152.29 (i.e., the trail user submits a statement of willingness to assume financial responsibility and acknowledges that interim trail use is subject to possible future reactivation for rail service), we will issue a CITU that provides a negotiation period, usually 180 days, for the parties to complete a trail use agreement. However, the trail user is obligated, in addition to maintaining the integrity of rail banking, to ensure that the right-of-way does not become a public nuisance. Federal preemption does not extend to the legitimate exercise of police power by states and localities.

PUBLIC USE

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. The Idaho Transportation Department (IDT), in a request embraced in the IPUC pleading, asks the Board to impose a public use condition covering specified portions of the line, and the Nez Perce seek imposition of a condition covering the entire line. IDT maintains that portions of the right-of-way are suitable for use as public highways, and it proposes to acquire property generally located between mileposts 0.0 and 13.0 and at four specified points where Highway 95 crosses the right-of-way. The Nez Perce assert the condition is of public importance because: (1) part of the rail corridor is located along Lapwai Creek, which is a habitat for endangered salmon and trout; (2) the corridor connects the Nez Perce National Historic Park to several rural communities; (3) the corridor has scenic, historic, and cultural significance; and (4) the corridor could provide recreational opportunities for tribe members and the general community.

Thus, both IDT and the Nez Perce request that, for a period of 180 days, CSPR be prohibited from disposing of the right-of-way, other than tracks, ties, and signal equipment, except for public use on reasonable terms. The Nez Perce additionally request that the railroad be barred from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. IDT avers that imposition of the condition will allow it to negotiate whether the adverse effects of abandonment might be mitigated with augmentations to the State Highway system. The Nez Perce state that they need 180 days to assemble and review title information, complete trail planning, review environmental documents, and commence negotiations with CSPR.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. IDT and the Nez Perce have met the public use criteria for imposing a public use condition; they have specified: (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 the period of time requested. 49 CFR 1152.28(a)(2). Accordingly, the requested 180-day public use condition also will be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, CSPR is not required to deal exclusively with IDT and the Nez Perce; it may engage in public use negotiations with other interested persons.

We find:

1. The present or future public convenience and necessity permit the abandonment 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 subject to the conditions that CSPR: (1) shall not salvage or dispose of the right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) shall notify NGS not less than 90 days prior to commencement of salvage operations, if such operations are expected to destroy or disturb any of the 23 geodetic station markers listed in CSPR's Environmental Report; (3) shall retain its interest in and take no steps to alter the historic integrity of the rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (4) shall consult with the City of Cottonwood's Highway Engineer prior to conducting salvage activities at or near grade crossings; (5) shall consult with EPA and secure all necessary permits prior to initiation of salvage or disposal activities; (6)(a) shall consult with ID-DEQ and the Nez Perce regarding development of a Track Salvage and Stream Restoration Work Plan (Work Plan), submit the Work Plan to ID-DEQ and the Nez Perce for their review, design the Work Plan to protect stream habitats during any salvage activities to restore in-stream habitats, including the use of best management practices, and address in the Work Plan disposal of cross ties and timbers which may have been treated with creosote or pentachlorophenol, both of which are

considered toxic, and (b) shall obtain from ID-DEQ all required discharge permits and plans to prevent hill/slope mass wasting prior to initiation of salvage or disposal activities; (7)(a) shall consult with BLM to eradicate all noxious or non-native weeds prior to abandonment, consult with BLM regarding the application of approved herbicides to all non-native weed infestations and the seeding and mulching of all disturbed areas with native vegetation, and maintain responsibility for weed control and successful revegetation program as long as the right-of-way remains under CSPR's ownership, (b) shall provide adequate certification to BLM that the right-of-way contains no hazardous substances that are subject to provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, and the Resource Conservation and Recovery Act of 1976, as amended, and (c) shall take reasonable measures to dismantle or seal all trestles, bridges, and tunnels in a manner that will make them inaccessible to the public, if the right-of-way is not converted to any other public use; (8) shall leave intact the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a 180-day period from the effective date of this decision and certificate, to enable any state or local government agency or any other interested person to negotiate an acquisition for public use; and (9) shall comply with the interim trail use/rail banking procedures, as set forth below.

2. Abandonment of service over the line will not have a serious, adverse impact on rural and community development.

3. The line may be suitable for other public purposes.

4. 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. The motion to strike, jointly filed by IPUC and the Committee, is granted as noted above.

2. The motion to augment the record, jointly filed by IPUC and the Committee, is granted.

3. This application is granted, subject to the conditions specified above.

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, 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.

5. Interim trail use/rail banking is subject to 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 certificate 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 certificate, interim trail use may be implemented. If no agreement is reached by that time, CSPR may fully abandon the line, provided the conditions imposed above are met.

8. CSPR must promptly provide any interested persons the information they require to formulate an OFA to acquire or subsidize the line.

9. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by September 25, 2000, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

10. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

11. Provided no OFA has been received, this decision and certificate will be effective October 13, 2000. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

12. Pursuant to 49 CFR 1152.29(e)(2), CSPR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSPR's filing of a notice of consummation by September 13, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn. Vice Chairman Burkes commenting with a separate expression.

Vice Chairman Burkes, Commenting:

Although the economics appear to justify the abandonment of this line, I am troubled by several aspects of this case. First, the applicant, Camas Prairie RailNet, Inc. (CSPR), assumed operations of this line in April 1998, which is only a little more than two years ago. I am troubled by the statement made by the former General Manager of the line who indicates that he is convinced that "CSPR's attempted abandonment of the Grangeville line is premature at best, and at worst was preconceived from the start." It appears that one of the factors that reduced the revenues of this line was the reluctance of BNSF and UP, the former owners of the railroad, to reach revenue agreements with CSPR. In the short time that CSPR has operated the line, I am also not convinced that it has explored all alternatives to increasing traffic and revenues.

I am also concerned that the Board has not given sufficient weight to the adverse impact on rural and community development. The decision states that "The fact that shippers are likely to incur harm and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities." Therefore, under our standards, potential harm to an area can not outweigh the economics of the line. There is broad local opposition to this abandonment. This line serves a rural area that is economically distressed. Traffic on the line is comprised primarily of grain and lumber shipments. These shippers will incur substantially higher costs in the diversion to truck transportation that will also result in an increase of approximately 18,000 trucks per year on U.S. Highway 95.

I sincerely hope that an offer of financial assistance (OFA) comes forward that would allow for the continued operation of this line.

Vernon A. Williams
Secretary

APPENDIX A

OPPOSITION TO APPLICATION

The following public and private entities and individuals filed protests or comments in opposition after the notice of the application was published.

Idaho Public Utilities Commission
Save The Camas Prairie Railroad Committee
U.S. Department of the Interior, Bureau of Land Management
Lewis County Commissioners
City of Grangeville
Grangeville City Council
Nez Perce Tribal Executive Committee (The Nez Perce do not take a position on the merits.)
Clearwater Economic Development Association
Clearwater Resource Conservation and Development Council, Inc.
Clarkston Chamber of Commerce
North Central Idaho Travel Association
Sierra Club
American Rivers, Idaho Rivers United, and Save Our Wild Salmon (jointly)
ILO-Vollmer Historical Society
Idaho Barley Commission
Senior Citizens Dollar A Month Club
Great Western Malting Company
Heckman Cattle Company
Frances West Holdorf
Kristin Frish
Jerry Morelan
Billy and Joyce Wikoff
Garold and Ellen Haskin
June Ferguson
Nick Gerhardt
Harold and Carol J. Schaeffer

The following public and private entities and individuals filed comments in opposition before notice of the application was published.

City of Cottonwood
City of Winchester
Idaho Department of Commerce
Grangeville Chamber of Commerce
Grangeville Economic Management Team

Clearwater Economic Development Association
Idaho Grain Producers Association
Idaho Farm Bureau Federation
Union Warehouse & Supply Company
Ted and Regina Kaschmitter

APPENDIX B
Computation of Revenue Attributable to the Line, Avoidable Costs, and Reasonable Return on the Value of the Line to Be Abandoned

	CSPR's Base Year Actual[1]	CSPR's Forecast and Subsidy Year	Protestants' Forecast and Subsidy Year	CSPR's Revised Forecast and Subsidy Year	STB's Restated Forecast and Subsidy Year
1. Freight Orig. and/or Term. on Branch	**$670,410**	**$877,944**	**$1,018,629**	**$907,530**	**$907,530**
2. All Other Revenue and Income	**147,412**	**165,531**	**182,309**	**167,896**	**167,896**
3. Total Attributable Revenue (Ls. 1 thru 3)	**$817,822**	**$1,043,475**	**$1,200,938**	**$1,075,426**	**$1,075,426**
4. On-branch Costs:					
a. Maintenance-of-Way and Structures	**$258,302**	**$890,013**	**$225,030**	**$471,782**	**$464,728**
b. Maintenance-of-Equipment (Including	**192,193**	**203,106**	**148,801**	**205,207**	**125,771**
c. Transportation	**199,254**	**202,758**	**101,383**	**202,758**	**92,968**
d. General & Administrative	**48,900**	**50,374**	**32,684**	**50,712**	**0**
e. Freight Car Costs (Other Than Return)	**65,391**	**77,975**	**70,732**	**77,292**	**77,975**
f. Return on Value - Freight Cars	**10,075**	**5,718**	**10,647**	**10,075**	**10,647**
g. Property Taxes	**32,959**	**32,959**	**0**	**32,959**	**32,959**
h. Total (Ls. 4a thru 4g)	**$807,074**	**$1,462,903**	**$589,277**	**$1,050,785**	**$805,048**
5 Off-branch Costs:					
a. Off-Branch Costs (Other Than Return)	**$303,531**	**$522,354**	**$20,112**	**$428,845**	**$428,845**
6. Total Avoidable Costs (L.4h + L. 5a)	**$1,110,605**	**$1,985,257**	**$609,389**	**$1,479,630**	**$1,233,893**
7. Rehabilitation	**$0**	**$0**	**$0**	**$418,231**	**$0**
8. Administrative Costs (Subsidy Year Only)	**0**	**10,435**	**0**	**10,754**	**0**
9. Casualty Reserve Account	**0**	**0**	**0**	**0**	**0**
10. Total Rehabilitation/Subsidization Cost (Ls.7 thru 9)	**$0**	**$10,435**	**$0**	**$428,985**	**$0**
11. Valuation of Road Properties					
a. Working Capital	**$0**	**$59,884**	**$23,779**	**$42,769**	**$32,647**
b. Income Tax Consequences	**0**	**(895,007)**	**(276,406)**	**(895,007)**	**(703,800)**
c. Net Liquidation Value	**0**	**2,660,400**	**1,032,503**	**2,660,400**	**2,157,223**
d. Total (Ls. 11a thru 11c)	**$0**	**$1,825,277**	**$779,876**	**$1,808,162**	**$1,486,070**
12. Nominal Rate of Return	**0.0%**	**15.91%**	**15.8%**	**15.8%**	**15.8%**
13. Nominal Return on Value (L. 11d x L. 12)	**$0**	**$290,456**	**$123,220**	**$286,233**	**$234,799**
14. Holding Gain (Loss)	**$0**	**$219,025**	**$15,488**	**$61,138**	**$32,358**
15. Total Return on Value (L. 13 - L. 14)	**$0**	**$71,431**	**$107,732**	**$225,095**	**$202,441**
16. Avoidable (Loss) or Profit from Operations (L. 3 -	**($292,783)**	**($941,782)**	**$591,549**	**($404,204)**	**($158,467)**
17. Avoidable (Loss) or Profit Including Return on Value (L.3 - Ls. 6&15) (Excluding Rehabilitation)		**($1,013,213)**	**$483,817**	**($629,299)**	**($360,908)**
18. Estimated Subsidy Payment Including Rehabilitation (L.3 - Ls. 6, 10, & 15)		**($1,023,648)**	**$483,817**	**($1,058,284)**	**($360,908)**

[1] As modified by CSPR's Reply Statement.