

Before the Surface Transportation Board

BNSF Railway Co. --            )  
Abandonment Exemption -    ) AB 6 (Sub-no. 468X)  
in Kootenai County, ID     )

Comments  
on behalf of  
Stimson Lumber Company  
to  
Reply of Pan-American Railway, Inc.

Stimson Lumber Company supports the petition for exempt abandonment filed by BNSF Railway in this proceeding, and further supports the requested exemption from "offer of financial assistance" ("OFA") procedures under 49 U.S.C. 10904. Section 10904 authorizes a kind of eminent domain procedure whereby a party can acquire an otherwise to be abandoned rail line on terms set by this Board for continued rail use. We emphasize that the purpose of the statute is to foster continued rail use. If there is no potential for rail use, then the statute is misapplied. See Redmond-Issaquah Railroad Preservation Association v. STB, 223 F.3d 1057 (9<sup>th</sup> Cir. 2000) (STB correctly disallowed OFA where insufficient evidence of continued rail purpose).

Stimson is filing these comments in order to resolve certain confusion that may arise from the "Reply" filed by Pan-American Railway, Inc. ("Pan-Am") in this proceeding.<sup>1</sup> In that Reply, Pan-Am opposed the OFA exemption sought by BNSF, claiming instead that it (Pan-Am) wished to file an OFA to serve potential shippers at the Atlas and DeArmond mill sites along the line.

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<sup>1</sup> There are apparently are several companies doing business as Pan American Railway or some variation of that name. The Pan American Railway at issue in this proceeding has, so far as Stimson Lumber can tell, one principal and shareholder/owner, namely Peter Cooper.

Stimson Lumber long has been the only shipper on the line at issue in this proceeding, operating two lumber mills (DeArmond and Atlas) served by the rail line. Stimson's rail-dependent operations on this line have permanently ceased. Stimson is aware of no other potential rail users on the line; certainly Pan-Am has identified none.

What Pan-Am has identified are Stimson's two former mill sites (DeArmond and Atlas) as locations where potential shippers might locate. This is simply not true. Stimson sold the DeArmond mill site to North Idaho College Foundation for redevelopment as part of the adjoining North Idaho College campus. The DeArmond mill site thus has no potential rail shippers and no likelihood of ever having a potential rail shipper, at least in any foreseeable future.

Stimson has contracted to sell its Atlas site to a developer which plans high-end residential uses for that property. Stimson's contract with the developer is conditioned on abandonment of the rail line so the line may be incorporated in the development. Obviously there are no potential shippers on that line, and obviously continued existence of the rail line interferes with Stimson's ability to realize the highest and best use of its property. Even more frustrating to Stimson, Stimson has not been approached by any person with any plan to develop the property in any fashion that would be rail dependent or would require or be assisted by continued rail use. Thus, although Pan-Am makes vague statements about working with a Port District (that does not exist) or the City of Post Falls to buy the Atlas

site to develop it as "the [non-existent] Port District's main terminal and industrial park," no representative of any such District or proto-District, let alone the City of Post Falls, has ever approached Stimson to buy the property.

Pan-Am does not disclose much about itself except to state that its principal is "Mr. Peter Cooper." Stimson Lumber is aware of no evidence to suggest that Mr. Cooper has funds sufficient to own and to operate a railroad on the line at issue in this proceeding, much less to purchase any property in the former mill sites he says he seeks to serve, if they were for sale to him or to his company, which they are not. As indicated, the DeArmond site was sold to North Idaho College Foundation, and the Atlas site is under contract to a residential developer.

A party like Pan-Am (Mr. Cooper) should not be permitted to hold up an abandonment proceeding for OFA proceedings, and thus use STB processes to frustrate the property rights of Stimson Lumber Company, without some credible showing that there is at least one potential rail shipper on the rail line, assuming arguendo even that would be enough. Pan-Am (Mr. Cooper) makes no such showing. Not only does Pan-Am fail to identify a single entity that wishes to use this line for rail purposes, Pan-Am as we have indicated does not even identify a location where some imaginary entity that might wish to use rail could now locate on this line.

If Stimson Lumber were to file an adverse abandonment application on this line, the evidence so far presented by Pan-Am (Mr. Cooper) would not be sufficient to resist the application.

Pan-Am identifies neither potential shippers nor any location for potential shippers. Pan-Am's incipient OFA is for no purpose other than frustration of legitimate private and public objectives of others. BNSF's request for an exempt abandonment should be granted, as should its request for an exemption from OFA procedures.

Respectfully submitted,

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Certificate of Service

I certify service by posting copies of the foregoing in the U.S. Mail, postage pre-paid, first class, this 2nd day of October, 2009, addressed to:

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