

225803

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY)	
ABANDONMENT EXEMPTION)	DOCKET NO. AB-6
IN KOOTENAI COUNTY, IDAHO)	(SUB-NO. 468X)

STATEMENT OF SUPPORT FOR PETITION FOR EXEMPTION

CITY OF COEUR D'ALENE
710 E. Mullan Avenue
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Dated: September 30, 2009

STATEMENT OF SUPPORT OF PETITION FOR EXEMPTION

The City of Coeur d'Alene, Kootenai County, Idaho ("City") unequivocally supports BNSF Railway Company's ("BNSF") Petition for Exemption from the prior approval requirements of U.S.C. 10903-05 of BNSF's abandonment of a 6.23 mile rail line located in Kootenai County, Idaho. In addition, City specifically supports BNSF's request for an exemption from the provisions of sections 10904 (OFA) and 10905 (PUC conditioning). The segment of this rail line from Milepost 12.33 to approximately Milepost 8.9 is within the city limits of Coeur d'Alene.

The City supports BNSF's request for an exemption from section 10904 (OFA) because: 1) there are no shippers on this line and no realistic prospects for the development of any shippers on this line; 2) there are important public uses planned for much of the line within the city limits of Coeur d'Alene; and 3) the two sites proposed by Replicant Pan American Railway, Inc. that it would purportedly provide rail service to are not owned by Pan-American and instead are either owned by or under contract to parties whose plans are not consistent with continued rail use. City supports exemption from the PUC conditioning provision because plans call for portions of the right of way at issue to be promptly sold for private development, parts to be exchanged for public development, and for general implementation of private/public development for which a general PUC condition would prove an encumbrance to meeting the public ends for this right of way.

DISCUSSION

Milepost 12.33 is adjacent to the City Park, the City's oldest public park. The rail line right of way from MP 12.33 to approximately MP 12.21 sits on Government Lot 48. Government Lot 48 was gifted to the City for a city park by Act of Congress in 1904 as part of the abandonment of Fort Sherman. The gift was subject to the railroad's right to use the right of way for railroad purposes. Once the railroad abandons the right of way the City plans to expand City Park and has given permission to the Museum of North Idaho for the construction of a new museum building. No shipping has occurred on this segment of the line for at least twenty years.

The rail line right of way from Milepost 12.21 to 10.96 is also on land from the abandoned Fort Sherman and is owned by the U.S. government. In 2008 the Bureau of Land Management ("BLM") and the City executed a Memorandum of Understanding endorsing a land exchange that would result in the City's urban renewal agency ultimately owning the BLM land.

Once in the urban renewal agency's hands the former BLM land is slated to be developed to: 1) support the expansion of North Idaho College, University of Idaho and Lewis Clark State College; 2) allow for construction of increased street access to the City's oldest neighborhood, the Fort Grounds neighborhood; 3) allow for the expansion of the North Idaho Centennial Trail pedestrian and bicycle trail; and 4) allow for urban development consistent with the Master Plan for the City's Educational Corridor, including an Institute for Advanced Study of Waste Water Treatment in conjunction with

the University of Idaho and the City's Wastewater Treatment Plant. (Note that in 2009 the Mayors' Institute on City Design, a partnership program of the National Endowment for the Arts, the American Architectural Foundation, and the United States Conference of Mayors awarded the City of Coeur d'Alene a grant to further study the Educational Corridor project through the Mayors' Institute on City Design Alumni Technical Assistance Program. The results of that design study have just been received and will be used as a template for the development of this property.)

The only shipper from Milepost 12.21 to 10.96, and the only shipper on the line from Milepost 12.33 to the City limits at approximately Milepost 8.9, was Stimson Lumber Company ("Stimson"). Stimson has closed and dismantled the two lumber mills it operated on this line. Stimson sold the DeArmond mill site (this is the same site that Replicant proposes for its "Log Transload Port" site) to the North Idaho College Foundation in 2009 for approximately ten million dollars. The North Idaho College Foundation purchased the property to allow for the expansion of North Idaho College, the University of Idaho and Lewis Clark State College and it is not for sale to Replicant or anyone else. Replicant's claim that this is a site that it would serve with rail is thus sheer fiction.

Stimson's Atlas mill site (which Replicant suggests is a "Renewable Energy Industrial Park" site it could serve) is under contract for sale to a private developer, Black Rock Development Company. Preliminary plans for a high-end mixed use residential and light commercial development, including a public trail and public waterfront access, on the former Atlas mill site have been presented to the City. No one has proposed an

industrial use for that site. Again, Replicant's suggestion that there even could be an industrial use is nothing more than imagination.

The rail line right of way from approximately Milepost 10.96 to Milepost 6.23 is owned by BNSF. The City, the North Idaho Centennial Trail Foundation and the City of Post Falls have begun preliminary discussions to expand the existing Centennial Trail on to this portion of the right of way. There are no shippers or realistic prospective shippers within the city limits of Coeur d'Alene. Replicant does not identify any shippers or prospective shippers there or anywhere else. Moreover, contrary to any intimation by Replicant, there have been no discussions between representatives of the cities of Coeur d'Alene and/or Post Falls and Replicant regarding the creation of a "Public-Private Partnership" or a "Port Authority".

Replicant Pan American Railway does not own either site it proposes for a Log Transload Port and Renewable Energy Industrial Park. Note that the property owned by North Idaho College Foundation and coveted by Replicant has been approved for annexation into the City with Commercial zoning. Replicant's proposed "Log Transload Use" use is not "grandfathered" and is not allowed in a Commercial zone. Further, the Idaho Secretary of State has no record of a d/b/a or any entity named "Post Falls-Coeur d'Alene Railroad" and Replicant cannot legally transact business in Idaho without filing with the Secretary of State. Finally, Replicant is known locally as a shell company that has never provided rail service and has never shipped as much as a toothpick. The "company" consists of its owner and no other employees. The owner of the company presents no evidence of any funds sufficient to own or operate a railroad.

In sum, Pan American opposes the OFA exemption requested by BNSF on the ground it wishes to file an OFA. But there are no shippers, or prospective shippers, and the two places Pan American proposes that it will serve (two former mill sites) are owned or contracted for by parties with plans that neither require nor are consistent with continued rail use of the premises. An OFA will serve no rail purpose and will interfere with the City's urban renewal and higher education projects. As stated in the Board's Decision in AB-409 (Sub-No. 5X) involving Los Angeles County Metropolitan Transportation Authority-Abandonment Exemption:

"The OFA provisions are intended to permit a party genuinely interested in providing continued rail service on a line that would otherwise be abandoned to acquire that line for continued rail service. Exemptions from 49 U.S.C. 10904 have been granted, however, when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service." LACTMA Decision at page 4.

As described above, the City and the community have valid public purposes and there is no plausible public need for continued rail service.

CONCLUSION

Like many communities, Coeur d'Alene has seen its economy evolve from one based on timber and mining to one based on tourism, light commercial and education. Planning has gone on for many years in anticipation of the last lumber mill closing. Now there are no more lumber mills in Coeur d'Alene and there is no more need for the railroad. The rail line involved in this abandonment is in the heart of the area planned for development as an Educational Corridor that will allow more students to get four year

degrees in Coeur d'Alene and support the new economy. The abandoned rail corridor will be used to expand City Park, the North Idaho Historical Museum and the Centennial Trail. The land will be used to build streets that will allow improved access to the existing Fort Grounds neighborhood and North Idaho College. The land will be accumulated with adjoining land owned by the North Idaho College Foundation for educational use as well as residential and commercial uses that support higher education. The "pie-in-the-sky" proposal of Replicant is full of misstatements, half truths and misleading statements that amount to fabrications and should not be the basis for delaying the use of this property by the public.

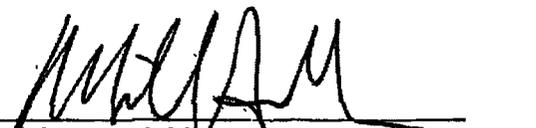
Respectfully submitted,


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VERIFICATION

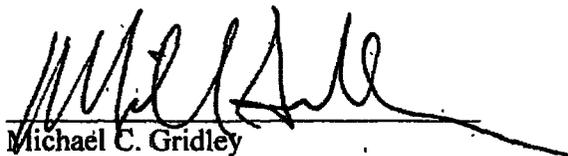
"I, Michael C. Gridley, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading."

Executed on September 30, 2009.


Michael C. Gridley

CERTIFICATE OF SERVICE

"I hereby certify that on September 30, 2009, I served all parties of record in this proceeding listed below with this document by United States mail and e-mail."


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